The Solicitors' Journal and Weekly Reporter.

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page ix.

VOL. LXXI. Saturday, April 23, 1927. No. 17

Current Topics.

A Master's Liability for his Servant's Tortious Acts.

THE CASE of *Poland* v. *John Parr & Sons*, decided in the Court of Appeal and reported in 1927, 1 K.B. 236, is an interesting one, for it extends the liability of a master for his servant's tortious acts in a very important direction. The facts, according to the head-note, are these: A carter on his way home for his mid-day meal happened by chance to be walking just behind one of his employer's wagons which was laden with bags of sugar. He saw a boy walking beside the cart with his hand on one of the bags. Honestly and reasonably thinking that the boy was stealing sugar from the bag, he struck him a blow. The boy fell and the wheel of the wagon injured his foot. The boy brought an action for negligence against the carter's employers. The main question was whether the servant's act was done in the course of his employment. The Court of Appeal held unanimously that it was. They held that a servant has implied authority in cases of emergency to protect his master's property. This was, of course, not new law. It had been laid down previously by the Court of Appeal in *Rees* v. *Thomas*, 1899, 1 Q.B. 1015, and in *Culpeck* v. *Orient Steam Navigation Co.*, 15 B.W.C.C. 187. But the interesting part of the judgment is that they held that such implied authority can exist even outside the actual hours of employment; that even though the carter was on his way home for his mid-day meal, and so outside his hours of employment, yet his wrongful act bound his employer; it is in this direction that the Court of Appeal have extended the law. In *Rees* v. *Thomas*, *supra*, the act of the servant in protecting his master's property was done during the actual hours of his employment. In *Culpeck* v. *Orient Steam Navigation Co.*, *supra*, it is difficult to say whether or not the act was done during these hours. There is only one report of the case and in that report the facts are stated merely in the head-note; the head-note says merely that the servant, who was a baker on board a liner, did the act of protecting his master's interests "during an interval in his work of baking," when he "went on deck for fresh air, as he was permitted to do." Whether this means an interval in the sense of a complete break in the hours of employment, as in *Poland's Case*, it is difficult to say, but even suppose it does mean such a complete break, yet the conditions of employment at sea differ so vastly from those of employment on land, in that hours of employment are constantly liable to alteration by force of circumstances, that the decision in *Culpeck's Case* would be of little value. *Poland* v. *Parr* thus extends the liabilities of a master in a very interesting and important direction. We now know that, at any rate as regards the master's liability to third persons for his servant's tortious acts, the fact that the act complained of was committed outside the actual hours of employment is not *per se* any bar to the master's liability. It will be interesting to see what influence *Parr's Case* will have on future decisions.

Crown Proceedings in Police Courts.

THE PRESENT-DAY tendency to give civil jurisdiction to courts of summary jurisdiction is evidenced by the Guardianship of Infants Act, 1925, the Adoption of Children Act, 1926, and the Statutes directing the recovery of income tax of weekly wage-earners (Income Tax Act, 1918, s. 169 (2)), and income tax generally where the amount is less than £50 (Finance Act, 1924, s. 30); and by other statutory provisions. The draft bill prepared by the Crown Proceedings Committee would seem to be the last place to look for matters affecting police courts, but clause 27 further illustrates the tendency to load justices with miscellaneous legal duties, by proposing that all Crown Debts not exceeding £20 shall be recovered summarily as civil debts. A special limit of time—two years—is proposed, and this is intended to override any other statutory provision as to the limit of time for proceedings. The volume of work in the police courts is steadily increasing. They are cheap and expeditious. But whether the process of enlarging their functions can continue much further without damaging their efficiency is a matter which begins to require consideration. It looks as if either the process must be slowed down, or the number of courts must be increased.

Reference by Home Secretary to the Court of Criminal Appeal.

R. v. *Knighton*, in the Court of Criminal Appeal on the 12th inst., is an instance of a rare procedure, the reference of a case to the Court of Criminal Appeal by the Home Secretary under s. 19 (*a*) of the Criminal Appeal Act, 1907. It is not the first instance, as some of the newspapers, always in too great a hurry to be able to verify their facts, declared, see *R.* v. *Gray*, 1917, 12 Cr. App. R. 244, duly noted by the faithful editor of that series and also by the editors of "Archbold's Criminal Pleading" (see p. 320). By r. 48 of the Criminal Appeal Rules the petitioner is to be treated as a person who has obtained from the Court of Criminal Appeal leave to appeal, and the case proceeded on that basis, the Lord Chief Justice pointing out that, while the court was prepared to hear fresh evidence for the defence, they were not re-trying the case, and were not a jury. There had already been an appeal on the defence of insanity set up at the trial, and that appeal had failed. The facts of the case were of great interest, but the Press, even if inclined to deal with them fully, were unable to do so by reason of the Judicial Proceedings (Regulation of Reports) Act, 1926. KNIGHTON was charged with the murder of his mother, and the principal witness against him was his sister, who slept in

the same room as the murdered woman. She told a fresh story to the Court of Criminal Appeal, designed to implicate her father and exonerate her brother. But the Court of Criminal Appeal stigmatised the revised version as untrue, and said that, if before the jury, it might have given them ground to infer a motive for the crime. Enough is said in the Press reports for it to appear that KNIGHTON was possibly engaged in an attempt at incest with his young sister (the witness) and that he murdered the mother to silence her after she became aware of what was happening. As the girl had made statements at the trial, and on the reference, contradictory of one another, it would have been unsatisfactory for a conviction involving the death penalty to rest upon her testimony, but the Court of Criminal Appeal was satisfied that there was ample evidence, apart from hers, to convict him.

A Distinguished Draughtsman.

OF THE MANY distinguished draftsmen of whom each generation of English lawyers can boast, few have had the success which actual experience demonstrates that has followed the labours of Sir MACKENZIE CHALMERS, to whom we owe the Bills of Exchange Act, 1882, the Sale of Goods Act, 1893, and the Marine Insurance Act, 1906, and the most illuminating commentaries on each of these statutes. His work on Bills of Exchange, which has just reached its ninth edition, is a fresh testimony to the success of his codifying labours. Few indeed of the three Acts for whose contents Sir MACKENZIE was responsible have given rise to serious controversy with the exception perhaps of s. 7 (3) of the Bills of Exchange Act, so much discussed in *Bank of England* v. *Vagliano*, 1891, A.C. 107. As the draftsman followed with keen interest the long and subtle arguments in that great case in which the sub-section was subjected to the most critical examination, he confessed that his feelings were much like those of the eminent Professor of Divinity when asked by a student to explain some passage he had written in a theological tractate: "My young friend," said the professor, "when I wrote that passage only God and I knew what it meant. Now, I am afraid, only God knows"! The confession proclaimed at once the modesty of the draftsman and the difficulty that is inherent in the preparation of Bills to be laid before Parliament. The late LORD BRYCE, in his "University and Historical Addresses" mentioned a case in which to his personal knowledge an important Bill was altered and printed in twenty-two successive drafts before it expressed, with approximate accuracy, the views of its sponsors. None of Sir MACKENZIE CHALMER'S codes has required this extensive process of revision before its acceptance by the Legislature, but, as he has himself confessed, he has not always found it a simple task to embody in statutory form the net result of a long series of decisions on each of the great branches of commercial law with which his name is so intimately associated. To him the practising lawyer owes a great debt of gratitude.

Pupil whether a Workman within the Workmen's Compensation Acts.

A NOTE might usefully be made of the decision of the Court of Appeal in *Broome* v. *Minister of Labour*, *Times*, 10th Dec., 1926, a case in which the court was called upon to decide, *inter alia*, whether the applicant came within the definition of a workman for the purposes of the Workmen's Compensation Acts.

Section 3 of the Workmen's Compensation Act, 1925, defines, subject to certain exceptions, a workman as being "any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing." Whether or not the relationship of master and workman exists is a question of fact, and so long as there is evidence to support a finding one way or the other, the finding will not be disturbed by an appellate court: *Smith* v. *General Motor Cab Co., Ltd.*, 1911, A.C. 188. Such matters as whether the alleged employer exercises any control over the work of the alleged employé, whether wages are paid, whether the engagement is terminable by notice, and so forth, are important matters to be considered in determining whether the relationship of master and servant exists, though they are by no means conclusive. In *Broome* v. *Minister of Labour* the facts were shortly as follows: The applicant was a disabled ex-service man, who had been accepted for training in the making of furniture at a government instructional factory, under a scheme for the employment of discharged and disabled ex-service men. The applicant, on being accepted for training, relinquished a pension, but received apparently in lieu thereof a maintenance allowance for himself and his wife, to which were added his daily travelling expenses to and from the factory at Luton. From these sums fines were deductible for failure to attend at the factory or for being late in so attending. The applicant was eventually suspended from his employment, owing to his suffering from dermatitis, and he obtained a certificate to that effect from the certifying surgeon employed under the Factories and Workshops Act, and he claimed compensation under s. 43 (1) (ii) of the Workmen's Compensation Act, 1925.

The learned county court judge held on the facts that the relation only of pupil and master and not that of workman and employer existed between the parties, the allowances which the applicant received being purely subsistence allowances and not in the nature of wages. On appeal the Court of Appeal refused to disturb this finding. The Court of Appeal further held that the applicant had not brought himself within para. (ii) of s. 43 (1) of the Workmen's Compensation Act, 1925, which entitles an applicant to compensation where he has been "in pursuance of any special rules or regulations, made under the Factories and Workshops Act, 1901, suspended from his usual employment, on account of having contracted" certain industrial diseases specified in the third schedule of the Workmen's Compensation Act, 1925.

It appeared that although there were certain rules and regulations made with regard to the instructional factory, these rules and regulations had not been made under the Factories and Workshops Act, 1901. The Court of Appeal therefore considered that the suspension order was wrong, and that consequently, in any event, the applicant could not rely on s. 43 (1) (ii) of the Workmen's Compensation Act, 1925.

Particulars on applications to review Workmen's Compensation Payments.

IT IS NOT an easy matter to invent a new tactical move in practice under the Workmen's Compensation Acts; the ground has been so thoroughly explored. Such a novel point, however, has recently been raised in two different county courts and was taken to the Court of Appeal, which, after a full argument, held that the matter was one of discretion for the county court judge, and, though the decisions were to the opposite effect, dismissed both appeals. In doing so, however, the court gave some excellent advice to county court judges for future cases of the same kind. In *Vickers, Ltd.* v. *Miners* and *Thames Steam Tug, &c., Co.* v. *Ingram* (reported elsewhere) the employer was seeking to review a weekly payment on the ground that the workman had wholly or partially recovered from his injury. In the first case he was hoping to prove complete recovery and therefore asked for termination or diminution, but in the second case only diminution was asked for. In each case the workman's solicitors, having received an application using Form 5 under the Rules, asked for an order for particulars of the extent of the diminution claimed. In *Vickers' Case* the registrar refused to make the order, but the county court judge reversed his decision and invited the employers, as being a powerful company, to appeal, apparently treating the case as a matter of principle. In the *Thames Steam Tug Company's Case* the judge refused the application and the workman appealed.

Private Street Works.

By ALEXANDER MACMORRAN, M.A., K.C.

(*Continued from p. 301.*)

III.

In the concluding paragraph of the note at p. 301, it was stated that proceedings for the enforcement of a charge on the premises might be taken either in the High Court or in the County Court. This statement is a little too wide, for the jurisdiction of the County Court depends upon the County Courts Act, 1888, s. 67, which confers upon the County Court all the powers and authority of the High Court for enforcing any charge where such charge shall not exceed in amount a sum of £500. And it has been held by the Court of Appeal that an action in the High Court to enforce a charge cannot be maintained if the charge is for a sum less than £10 (*Westbury & Severn, R.S.A.*, 30 Ch. D. 387).

In connexion with the enforcing of the charge on the premises reference may be made to the case of *Wealdstone U.D.C.* v. *Evershed*, 69 J.P., 258. In that case the owner of the premises charged was not known and could not be found. The local authority sought to get over the difficulty by bringing an action against "the owner" without naming him, then by obtaining in the action an order for substituted service, and afterwards an order for sale. It was held that the procedure could not be justified and that the person to whom the premises were sold could not be required to complete the purchase as the local authority could not make a title. The circumstances are not uncommon, especially when an estate has been laid out and disposed of in small lots. And it would appear that the only course open to the local authority in such a case is to take possession of the land and hold it until the owner turns up or they have acquired for themselves a title by possession.

In an earlier note reference was made to s. 268 of the Public Health Act, 1875, and to the cases decided with reference to that section. In particular it was pointed out that the decision which might be appealed against under that section was the demand for payment of the expenses. But the question has been raised, and has never been expressly decided, whether there may not be an appeal to Quarter Sessions against the original requirement of the local authority under s. 150. The point arises in this way:—The Public Health Act, 1890, s. 7, provides, that any person aggrieved by any order, judgment, determination or requirement of a local authority under this Act may appeal in manner provided by the Summary Jurisdiction Acts to a Court of Quarter Sessions. As the Act of 1890, s. 7, has to be read with the Public Health Acts, it has been suggested that the notice under s. 150 is a requirement of a local authority under the Act of 1890, but the doubt in the matter arises from the provision in sub-s. (2) of s. 7, to the effect that the section shall not apply in cases where there is an appeal to the Minister of Health under s. 268 of the Public Health Act, 1875. As has been said, the point has never been decided, but it is quite possible that there may be an appeal against the requirement of the local authority under s. 7 of the Act of 1890, for that right would accrue before any question could be raised under s. 268. The point is worth consideration.

Before leaving the provisions of the Public Health Act relating to private street works, reference should be made to s. 19 of the Public Health Act, 1907. That section is an adoptive section, and becomes operative in a district only when applied thereto by an order of the Ministry of Health. It provides that where repairs are required in the case of any street not being a highway repairable by the inhabitants at large to obviate or remove danger to any passenger or vehicle in the street, the local authority may give notice in writing to the owners of lands or premises fronting, adjoining or abutting on the street and may require the owners to execute, within a time to be specified in the notice, such repairs as are described in the notice. It further provides that, if within the time specified in the notice the repairs described therein are not executed, the local authority may execute the repairs and may recover summarily as a civil debt the cost of the repairs so executed from the owners in default, and the amount recoverable from each owner shall be in the proportion which the extent of his lands and premises fronting, adjoining or abutting on the street bears to the total extent of all lands and premises so fronting, adjoining or abutting. The object of the section may be gathered from the marginal note which is "Urgent repairs to private streets," and it was no doubt intended to enable a local authority to procure the repair of private streets without proceedings under s. 150 of the Act of 1875, or the Private Street Works Act, 1892, where that Act is in force, but while the object of the section may be clear, the application of it is by no means free from difficulty. It applies only to repairs and presumably the question whether work required to be done amounts to repairs is one of fact. On this point reference may be made to a Metropolitan decision, in *Ballard* v. *Wandsworth B.C.*, 70, J.P. 331. The word "required" in the section may mean required by the local authority, or may mean necessary; or the section may be read in this way, where repairs are necessary in a street the local authority may require them to be carried out in that street. In this view of the section an appeal would apparently lie to Quarter Sessions against the requirement of the local authority, under s. 11 of the Act of 1890 already mentioned. There does not appear to be any means of questioning the propriety of the requirement, at least in so far as it is made under the Public Health Act, except perhaps, in this way. The section applies, moreover, only in cases where it is required to obviate or remove danger to any passenger or vehicle in the street, and it is obvious that repairs might be necessary in the street although the want of repair hardly was such as to occasion danger. The section provides for the apportionment of the expenses according to frontage, but does not say by whom the apportionment is to be made, nor does it give any right of making objection to or appealing against the apportionment. In a recent case decided with reference to this section, *Nash* v. *Giles*, W.N. 309, the court decided that the local authority could not deal with two streets in one and the same apportionment. Section 19 goes on to provide that in every case in which within the time specified in the notice the majority in number or rateable value of owners of lands and premises in the street, by notice in writing, require the local authority to proceed in relation to the street under s. 150 of the Public Health Act, 1875, or if the Private Street Works Act, 1892, is in force in the district, under that Act, the local authority shall so proceed, and where the local authority so proceed, they shall on the completion of the necessary works, forthwith declare the street to be a highway repairable by the inhabitants at large, and on or after the date of the declaration the street shall become a highway so repairable. It will be observed that this provision is imperative, and that upon the service of a counter notice by the owners, the local authority must put in force their powers of making up the street, and when they have done so, must declare the street to be a highway repairable by the inhabitants at large.

The Private Street Works Act, 1892.

Up to this point attention has been directed almost exclusively to the provisions of the Public Health Acts in force before 1892. It should be noticed that these provisions are in substance a re-enactment of the similar sections of the Public Health Act, 1848, and amending Acts. The great defect of the procedure under the Public Health Act, 1875, was that it left the question of the liability of a frontager to be decided not before the works were put in hand, but after they had been executed and the expenses apportioned and demanded in the prescribed manner. To give one illustration of this, if a notice were given under s. 150, and there were a

dispute as to whether the street was a highway repairable by the inhabitants at large, that question could not be decided until after the works had been done, the expenses demanded, and proceedings taken for the recovery of such expenses. Again, if it were contended that the expenses were excessive or the work unnecessary, these points could not be decided save by way of appeal to the Ministry of Health under s. 268, and as has been pointed out, that remedy is not open until after the expenses have been demanded. It was in order to meet these and similar objections to the procedure that the Private Street Works Act, 1892, was passed, but that Act is an adoptive Act, that is to say, it applies only to urban districts in which it has been adopted in the prescribed manner, and while the Act has been adopted by a great number of authorities, there are some who still exercise their jurisdiction under the old Acts. The Act may be adopted by any urban authority, and it is provided that the Ministry of Health may declare that its provisions shall be in force in any rural district. Where, however, the Act has been adopted, it is provided that neither ss. 150, 151 and 152 of the Public Health Act, 1875, nor s. 41 of the Public Health Act, 1890, shall apply to any district or part of a district in which the Act is in force.

Now the Act relates to streets not being highways repairable by the inhabitants at large. In other words, it applies to the same kind of streets as those to which the Public Health Act, 1875, s. 150, relates. Moreover, it provides that where any street is not sewered, levelled, paved, metalled, flagged, channelled, made good and lighted to the satisfaction of the urban authority that authority may from time to time resolve with respect to such street to do any of the works mentioned, and it is to be noticed that by the interpretation clause, words referring to paving, metalling and flagging are to be considered as including macadamising, asphalting, gravelling, kerbing, and every method of making a carriage-way or foot-way. When the urban authority have passed a resolution for the execution of the works referred to, works which in the Act are called "private street works," the surveyor of the urban authority is required to prepare as respects each street or part of a street, specifications of the works with plans and sections, an estimate of the probable expenses of the works, and a provisional apportionment of the estimated expenses among the premises liable to be charged therewith under the Act. The specifications, plans, sections and estimates and provisional apportionment must then be submitted to the urban authority who may approve the same, with or without modifications. That resolution is then to be published in the prescribed manner and copies are to be served on the owners of the premises shown as liable to be charged in the provisional apportionment within seven days after the date of the first publication and during one month thereafter. The approved specifications, etc., are to be kept deposited at the offices of the urban authority and be open to inspection at all reasonable hours.

(To be continued.)

The Moneylenders Bill.

By The Hon. DOUGALL MESTON, of Lincoln's Inn
(Joint Author of "The Law Relating to Moneylenders.")*

(Continued from p. 285.)

III.

So far we have dealt with the alterations in the law relating to registration and the rate of interest chargeable upon moneylending transactions. The third principal alteration which it is proposed to make is in connexion with jurisdiction. In this connexion the Moneylenders Bill, s. 10, provides that "(1) His Majesty may by Order in Council direct that proceedings by a moneylender for the recovery of money lent by him or for enforcing any agreement or security relating to any such money, or any class of such proceedings, may be brought in any court specified in the Order, notwithstanding any limit imposed by statute on the jurisdiction of that court, and that such proceedings, or any class of such proceedings, shall be excluded from the jurisdiction of any court in which they might otherwise have been brought, and any such Order may contain such provisions as appear to His Majesty expedient with respect to the making of rules of court for regulating the procedure to be followed in the case of any such proceedings." Sub-section (2) of the above section then details the procedure to be adopted in regard to making any such Order in Council. The foregoing provisions do not specify any court to which moneylending transactions will be sent for disposal, but it is reasonable to assume that the county courts will be given a very wide jurisdiction in dealing with such matters. This will come as a boon to borrowers who are naturally deterred by the publicity which is accorded to High Court actions from claiming relief in those cases where the amount involved exceeds the jurisdiction of the county court.

The other matters in connexion with moneylenders which receive the attention of the new Moneylenders Bill relate to pawnbrokers, bankruptcy, and the circularising of the public with invitations to borrow money. We will deal with each of these matters in turn.

The new Bill contains some provisions relating to loans made by pawnbrokers which are of considerable importance. In order to understand the present position of pawnbrokers in regard to moneylending contracts it is, in the first place, necessary to refer to the Moneylenders Act, 1900, s. 6, which provides that "The expression 'moneylender' in this Act shall include every person whose business is that of moneylending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but shall not include (*a*) any pawnbroker in respect of business carried on by him in accordance with the provisions of the Acts for the time being in force in relation to pawnbrokers." In England and Wales the Act in force in relation to pawnbrokers is the Pawnbrokers Act, 1922 (35 & 36 Vict. c. 93), and by s. 10 of that statute it is provided that "Nothing in this Act (i.e., the Pawnbrokers Act, 1872) shall apply to a loan by a pawnbroker of above £10, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the pledge; and notwithstanding anything in this Act, a person shall not be deemed a pawnbroker by reason only of his paying, advancing or lending on any terms any sum or sums above £10." It has not so far been actually decided whether a pawnbroker is a moneylender within the Moneylenders Act, 1900, in respect of loans above £10. That question was considered, but not decided, by a Divisional Court of the King's Bench (Ridley and Avory, JJ.) in *Newman* v. *Oughton*, 1911, 27 T.L.R. 254. In that case a firm of pawnbrokers on one occasion lent a person the sum of £50 upon the security of a bill of sale. The borrower subsequently sought to set aside the transaction on the ground that the above loan was a moneylending transaction, and that, therefore, the pawnbroker should have been registered as moneylenders under the Act. The pawnbrokers contended that they were not moneylenders within the Act on the grounds (1) that they were protected from registration under exception (*a*) in s. 6 of the Moneylenders Act, 1900, and (2) that the transaction was an isolated one, and did not amount to a carrying on of the business of moneylending. The court held in favour of the pawnbrokers on the ground that the isolated transaction above mentioned did not constitute them moneylenders within the Moneylenders Act, 1900, and that therefore they did not require to be registered as such. Ridley, J., however, also dealt with the first ground of defence advanced by the pawnbrokers. The learned judge said: "Turning again to s. 6 (*a*) of the Moneylenders Act, 1900, I think the meaning of it is that the business of pawnbroking

* The Solicitors' Law Stationery Society, Ltd., price 12s. 6d. net.

is not included in the business of moneylending, the intention being that a pawnbroker who carries on his business in accordance with the Pawnbrokers Act need not be registered as a moneylender; if, however, a pawnbroker carries on his business of pawnbroker in such a way as to violate the provisions of the Pawnbrokers Act, then he does not come within the protection of s. 6 (*a*) of the Moneylenders Act, 1900. But I do not think that the exception in para. (*a*) of s. 6 is confined to pawnbroking transactions which are for sums of £10 or less. I think all pawnbroking transactions are intended to be excepted, except those which are in violation of the Pawnbrokers Act, and that Act is not violated if more than £10 is advanced on a pledge." But the learned judge then went on to say that he rested his decision in the present case on the ground that the transaction in question was an isolated one, a view in which AVORY, J., concurred. It is still, therefore, an open point whether or not a pawnbroker may be a moneylender within the Moneylenders Act, 1900, in respect of loans above £10.

It is now provided by the Moneylenders Act, 1927, s. 14, that "The provisions of the last three foregoing sections of this Act" (i.e., s. 11, which prohibits the charging of preliminary expenses, s. 12, which limits the time in which proceedings by a moneylender must be brought, and s. 13, which prohibits the assignment by a moneylender of a debt due to him) "shall not apply in relation to any loan by a pawnbroker on a pledge or in relation to any debt in respect of such a loan or any interest thereon, notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in accordance with the Acts for the time being in force in relation to pawnbrokers, so long as the following conditions are complied with in respect of the loan: (*a*) the rate of interest charged shall not exceed the rate of twenty per cent. per annum; and (*b*) subject as hereinafter provided the pawner shall not be charged any sum on account of costs, charges or expenses incidental to or relating to the negotiations for or the granting of the loan or proposed loan, except a charge for the preparation of documents relating to the loan not exceeding the sum of one shilling for every ten pounds lent, and a charge equal to the actual amount of any stamp duty paid by the pawnbroker upon any such document: Provided that a pawnbroker shall not be deemed to have failed to comply with the foregoing condition by reason of his having made in good faith and in accordance with the terms of the contract for the loan—(i) a charge in respect of the storage of any pledge which is not physically delivered to him or which, although so delivered, is of such weight or size that it would under the Post Office regulations for the time being in force, be received for transmission by parcel post; or (ii) a charge for interest at a rate not exceeding twenty per cent. per annum upon any sum reasonably expended by the pawnbroker in respect of the storage, care or carriage of the pledge; or (iii) a charge not exceeding five shillings for rendering an account of the sale of any pledge; or (iv) a charge not exceeding one shilling in respect of any inspection of the pawnbroker's books."

The above provisions of s. 14 of the Pawnbrokers Act, 1927, do not assist us to determine the question whether a pawnbroker is to be deemed a moneylender in respect of loans made by him exceeding £10 in amount. They merely provide that a loan made by a pawnbroker (notwithstanding that the loan is not made in the course of the business carried on by the pawnbroker in accordance with the Pawnbrokers Act, 1872) is not subject to the restrictions imposed on moneylenders by ss. 11, 12 and 13 of the Moneylenders Act, 1927, so long as the loan complies with the conditions of s. 14 aforesaid. It appears, however, that where a transaction is effected under a special contract made in accordance with s. 24 of the Pawnbrokers Act, 1872, the pawnbroker loses the protection afforded him by s. 6 (*a*) of the Moneylenders Act, 1900, and any such transaction may be reopened at the request of the borrower as if it had been effected with a duly licensed moneylender. For, it is provided by the Moneylenders Act, 1927, s. 9 (3) that "The powers of a court under the said section one of the Moneylenders Act, 1900, with respect to the reopening of the transactions of moneylenders, shall extend to any transaction effected under a special contract made in accordance with the provisions of section twenty-four of the Pawnbrokers Act, 1872, and accordingly, for the purposes of the first mentioned section the provisions of paragraph (*a*) of section six of the Moneylenders Act, 1900, shall not apply with respect to any such transaction." In regard, therefore, to special contracts made under s. 24 of the Pawnbrokers Act, 1872, a pawnbroker is to be deemed a moneylender for the purposes of s. 1 of the Moneylenders Act, 1900. So much for the subject of pawnbrokers.

In regard to bankruptcy, the new Bill contains an important clause in favour of debtors. It will, however, be convenient to state the existing provisions relating to bankruptcy. In this connexion the Moneylenders Act, 1900, s. 1 (3), provides that "on any application relating to the admission or amount of a proof by a moneylender in any bankruptcy proceedings, the court may exercise the like powers as may be exercised under this section when proceedings are taken for the recovery of money." Thus, in *Re a Debtor; ex parte The Debtor*, 1903, 1 K.B. 705, it was laid down by the Court of Appeal that the powers conferred by s. 1 of the Moneylenders Act, 1900, can be exercised by the Court of Bankruptcy upon the hearing of a petition by a moneylender for a receiving order against a borrower where the petition is founded on a final judgment recovered in an action, *even though the debtor did not apply for relief* under s. 1 of the Moneylenders Act, 1900, in the original action. In that case the registrar had refused to consider the debtor's submission that the transaction in question was a harsh and unconscionable bargain on the ground of alleged excessive interest, and the Court of Appeal sent the matter back to the registrar for the consideration of that matter. In other words the Court of Bankruptcy (which includes the registrar) may reopen a moneylending transaction on which it is sought to found a bankruptcy petition in order to ascertain whether the transaction is of such a nature as to entitle the borrower to relief. But it must be remembered that the above powers are in the court alone. Thus, in *Re Armstrong; ex parte Lipton*, 1926, 95 L.J. Ch. 184, it was held that the trustee in bankruptcy cannot reject a proof on the ground that the transaction is harsh and unconscionable, for the court alone has power to reject a proof on the ground that, in its opinion, the transaction in question is harsh and unconscionable. It may also be stated that a moneylender cannot found a petition on a moneylending transaction that is void. Thus, in *Re a Debtor; ex parte Carden*, 1908, 52 Sol. J. 209, the debt on which it was sought to found a bankruptcy petition arose out of a moneylending transaction which was in contravention of s. 2 (1) (*c*) of the Moneylenders Act, 1900, i.e., the moneylender had taken a security for the loan otherwise than in his registered name. As the moneylending transaction was therefore void, it could not be sued on, and consequently could not be made the foundation of a bankruptcy petition.

The new Bill does not propose to interfere in any way with the powers conferred on the Court of Bankruptcy by s. 1 (3) of the Moneylenders Act, 1900, but is designed to ameliorate the condition of the unfortunate borrower who is made bankrupt. In this respect the Moneylenders Act, 1927, s. 8, (1) that "Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, voting at meetings, compositions and schemes of arrangement, and dividend, be calculated at a rate not exceeding five per cent. per annum, but nothing in the foregoing provision shall prejudice the

right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled." And it is further provided by sub-s. (3) of the above section that a moneylender's proof will not be admitted in bankruptcy proceedings unless it shows in detail (*a*) the amount of the sums actually lent to the debtor and the dates on which they were lent, and the amount of every payment already received by the moneylender in respect of the loan and the date on which every such payment was made; and (*b*) the amount of the balance which remains unpaid distinguishing the amount of the principal from the amount of interest included therein. The object of the foregoing provisions of sub-s. (3) is to enable the Registrar in Bankruptcy to ascertain more easily and speedily whether the debt on which a proof is lodged is a fit subject for relief under the powers conferred upon him by s. 1 of the Moneylenders Act, 1900, i.e., whether the transaction which gave rise to the debt is based as a harsh and unconscionable bargain entitling the borrower to relief, and if it is so the registrar may reject the proof.

The last matter of importance dealt with by the new Bill is the prohibition of moneylenders' circulars and the employment of agents and canvassers by moneylenders for the purpose of inducing loans. Under the existing law the only persons who are protected from the attentions of moneylenders in these respects are infants. By s. 2 of the Betting and Loans (Infants) Act, 1892, it is a misdemeanour to send infants circulars inviting them to borrow money, and under s. 4 of the same statute it is an offence, punishable on summary conviction or indictment, to solicit an infant to make an affidavit or statutory declaration in connexion with any loan. It is also provided by s. 5 of the Moneylenders Act, 1900, that: "Where in any proceedings under s. 2 of the Betting and Loans (Infants) Act, 1892, it is proved that the person to whom the document was sent was an infant, the person charged shall be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age." It will be observed therefore, that the law has been assiduous in protecting infants from the attentions of moneylenders, but the legislature will now be asked to provide that majors as well as minors shall be safeguarded in similar fashion. For, the Moneylenders Act, 1927, s. 4, provides that: "(1) No person shall knowingly send or deliver or cause to be sent or delivered to any person except in response to his written request any circular or other document advertising the name, address or telephone number of a moneylender, or containing an invitation —(*a*) to borrow money from a moneylender; (*b*) to enter into any transaction involving the borrowing of money from a moneylender; (*c*) to apply to any place with a view to obtaining information or advice as to borrowing any money from a moneylender." It is provided by sub-s. (4) of the same section that any person acting in contravention of the above mentioned provisions relating to circularising and advertising shall be guilty of a misdemeanour rendering him liable to fine or imprisonment, or to both. And by sub-s. (5) it is provided that a moneylending transaction brought about in contravention of the aforesaid provisions shall be void. Finally, the employment by a moneylender of any agent or canvasser for the purpose of inviting any person to borrow money from him is prohibited by sub-s. (3) of the same section, and any transaction brought about by such methods is subject to the civil and criminal penalties above mentioned.

The Duty of an Estate Agent.

Keppel v. *Wheeler*, 1927, 1 K.B. 577, is an interesting case, in which important rules of law were laid down concerning the duties of estate agents to their principals. The main question, shortly put, was whether an agent, employed to find a purchaser, and having found one whose offer has been accepted, is under any duty to communicate to the vendor a subsequent offer at a higher price. The plaintiff was the owner of a block of flats and desirous of selling. He had employed Messrs. GIDDY & GIDDY, who had not found a purchaser, and on the 28th May, 1925, he instructed the defendants to act for him (although not as exclusive agents), informing them that he wanted £6,500 for the property but would probably accept £6,000. On the following day the defendants obtained from one, ESSAM, a written offer of £6,150 for the property, subject to contract; ESSAM was himself an estate agent, but the defendants were not aware of this. The defendants immediately communicated this offer to the plaintiff, who expressed his readiness to accept it, subject to contract; and on the same day the plaintiff wrote to the defendants formally accepting the offer "subject to contract," and also wrote to his solicitors instructing them to act in the matter. The defendants, with the plaintiff's approval, sent copies of the offer and acceptance to the plaintiff's solicitors and also to ESSAM's solicitors. ESSAM sent a cheque for £615 to the defendants by way of deposit, the receipt of which they acknowledged in a letter stating that the plaintiff had accepted the offer "subject to contract." On the 3rd June, one, DANIEL, a tenant of one of the flats, having heard of the agreement (subject to contract) to sell to ESSAM, informed the defendants that he would be prepared to give £6,750 for the property—being an increase of £600 on the price agreed to be paid by ESSAM. The defendants did not inform the plaintiff of this new offer, but, instead, enquired of ESSAM whether he would accept £600 profit for his bargain. ESSAM refused, but expressed willingness to sell the property for £6,950—which amounted to a profit of £800 on his purchase. DANIEL agreed to pay this sum, and it was agreed that the defendants should be paid a commission of £115 on the sale by ESSAM to DANIEL. The contracts for sale by the plaintiff to ESSAM were not signed until the 8th June and were not exchanged until the 11th. A contract of sale by ESSAM to DANIEL was signed on the 20th June. On learning of the sale by his purchaser at a profit of £800, the plaintiff brought this action against the defendants claiming damages for breach of duty by the defendants in not disclosing the offer which, before a binding contract had been concluded with ESSAM, they had received from DANIEL. Mr. Justice FINLAY dismissed the action, upon the ground that the defendants had fully performed their obligations to the plaintiff when they had obtained the offer from ESSAM and had, with the plaintiff's authority, sent a copy of the written acceptance (which was subject to contract) to ESSAM's solicitors. The Court of Appeal overruled this decision, upon the ground that the relation of principal and agent between the plaintiff and the defendants continued up to the time when a legally binding contract was entered into, and that during this period it was the duty of the defendants to communicate "any offer which came to them, larger or more satisfactory than the one which they had already submitted to their principal" (per BANKES, L.J.). ATKIN, L.J., in the course of his judgment, said:—

> "It appears to me to be a complete mistake to suppose that when agents are employed to sell a property, their duty ends when they have introduced a purchaser ready and willing to buy the property. It is true that if the transaction goes through, that is all they need prove in order to earn their commission; but up to the time at which there is in fact a concluded agreement between the purchaser and the vendor, the agents still have a duty to their principal."

The Lord Justice referred to *Toulmin* v. *Millar*, 58 L.T. 96,

in which case the plaintiff was an estate agent suing for a commission. Lord WATSON, in that case, observed: "When a proprietor, with the view of selling his estate, goes to an agent and requests him to find a purchaser, naming at the same time the sum which he is willing to accept, that will constitute a general employment."

SARGANT, L.J., in his judgment, observed that the argument for the defendants seemed to suggest that they were merely agents to find a purchaser; but they were, in fact, agents for the purpose of obtaining the best price which could reasonably be obtained. As to the duration of their responsibility, the agents had not fully apprehended the rule of the court that an agreement subject to contract is merely in the stage of negotiation (*Winn* v. *Bull*, 7 C.D. 29), and the Lord Justice proceeded to make the following important statement of the law:—

> "To my mind it is quite clear as regards time, that when agents are employed to find a purchaser for a property, their position as agents cannot definitely end at any time short (*at the earliest*) of the time when a definite binding contract is entered into and exchanged; and that if in the meantime they receive information . . . which tends to show that the value of the property was greater than had been supposed, or is otherwise of a nature to influence materially the judgment of their principal in going on with, or ceasing to go on with, the contract which was being originally negotiated, they are bound to communicate that information to their principal; and if they do not do so, they are guilty of a breach of their duty as agents."

By way of illustration, the Lord Justice pointed out that if two days after the agreement "subject to contract" had been entered into, the defendants had heard that the property had been scheduled to be taken for the purposes of a public improvement, or some other event had happened which increased the amount which the vendor might expect to obtain," they would be definitely bound, in their capacity of agents for sale for this vendor, to communicate that information to him."

The appeal of the plaintiff was allowed accordingly, and the defendants were ordered to pay to the plaintiff £591—such sum representing the difference between the price of £6,150 received by the plaintiff on the sale to ESSAM, and the sum of £6,750, originally offered by DANIEL, less commission at 1½ per cent. on the amount of such difference.

Mr. Justice FINLAY had given judgment for the defendants on their counter-claim for £115, being the commission on the sale to ESSAM; and the Court of Appeal affirmed the judgment on this point, holding that the defendants' breach of duty in not communicating the later offer had not disentitled them to commission on the sale effected.

The Sale of Food (Weights and Measures) Act, 1926.

THE Sale of Food (Weights and Measures) Act, 1926, is, as its name indicates, aimed at the prevention of the giving of short weight, measure or number, in the case of the sale of articles of food. This Act does not come into operation until the 1st July, 1927, but in so far as it applies to "prepacked" articles (i.e., articles packed or made up in advance ready for retail sale in a wrapper or container), other than tea, the Act will not come into operation until the expiration of such period, not being less than six months from the 1st July, 1927, as the Board of Trade may by order determine, the Board being empowered to fix different periods with regard to different articles (cf., s. 15 (2)).

Section 1 of the Act prohibits in general the giving of short weight, measure or number, where articles of food are sold by weight, measure or number, and in the case of prepacked articles, statements as to weight and measure will, unless otherwise specified, be deemed to be statements as to the *net* weight or measure (s. 2).

Certain articles are required to be sold by net weight, viz., tea, coffee beans, ground coffee, including chicory mixtures, cocoa, cocoa powder, chocolate powder and potatoes (s. 4 (1), and Sched. I, Pt. I). Other articles (viz., bacon, ham, butter, lard, suet, margarine, although they also are required to be sold by net weight, are exempt from this requirement, where they are weighed for sale in a wrapper or container, and the weight of the wrapper or container does not exceed 2½ drams per pound of the article sold (Sched. I, Pt. II). Certain other articles again (e.g., flour of wheat, cornflour, oatmeal, rice, sago, sugar, etc. (see Pt. III of Sched. II), are exempt from the provision as to sale by net weight, where they are weighed for sale in a wrapper or container, and the weight of the wrapper or container does not exceed the specified number of drams per pound of the article sold.

Where any of the above articles, which are required to be sold by net weight (i.e., the articles specified in the First Schedule) are "prepacked," the following further conditions will apply to the sale of any such article, viz. (1) the article must be made up for sale in quantities of two ounces, or in multiples of two ounces up to a limit of eight ounces, in multiples of a quarter of a pound up to a limit of two pounds, in multiples of half a pound up to a limit of four pounds, or in multiples of one pound, and (2) the wrapper or container must, subject however to certain exceptions, bear thereon or on a label securely attached thereto, a true statement in plain characters of the minimum net weight of the article, or in case where the weight of the wrapper or container is permitted to be included in the weight purported to be sold, the minimum weight of the article with its wrapper or container (s. 4 (2)).

Statements as to the weight, it should be further observed, may be printed on the wrapper or container, in the case of prepacked articles (s. 4 (5)). The above-mentioned provision with regard to the sale of articles by net weight, and with regard to the sale of such articles, where they are "prepacked," do not, however, apply to articles sold or intended to be sold for shipment outside Great Britain (s. 4 (6)), nor do they apply to sales for consumption on or at the seller's premises, or to sales in petty amounts (s. 8).

There are certain special provisions with regard to the sale of butcher's meat, of bread, and milk.

BUTCHER'S MEAT.

As regards butcher's meat (which is defined in s. 13 (1)), such meat may not be sold otherwise than by net weight and a legible statement of the net weight on which the purchase price is based must be given at the time of delivery. This statement, however, will not be necessary where the meat is weighed in the presence of the buyer, and is immediately delivered on or at the seller's premises. Where at the request of the purchaser the meat is subjected to a process involving loss of weight (e.g., boning, trimming, etc.), and the materials which are thus removed are not delivered with the meat, the seller must furnish a statement not only of the net weight on which the purchase price is based, but also a statement of the net weight of the meat as sent out for delivery; and this double statement is also necessary where, at the request of the purchaser, the delivery of the meat is deferred (s. 5).

BREAD.

Bread may not be sold otherwise than by net weight, unless it is sold in loaves not exceeding twelve ounces in weight, or happens to be "fancy bread." In order to determine whether bread is "fancy bread," it is necessary to determine whether, at the time when the transaction is called into question, the bread is regarded as "fancy bread": *R.* v. *Wood*, L.R. 4 Q.B. 559; *Bailey* v. *Barsby*, 1909, 2 K.B. 610.

Bread, further, subject to certain exceptions (e.g., sale of fancy bread, or of loaves not exceeding twelve ounces, or of loaves supplied under contract where the contract provides for the supply for consumption on the premises of the purchaser of not less than a half hundredweight of bread at a time, and for the weighing of the bread on delivery), may not be sold unless its net weight is one pound or an integral number of pounds.

Any person who sells bread must further keep in a conspicuous part of his premises a correct weighing instrument suitable for weighing bread, and must, if required by a purchaser or by an inspector, weigh the bread in the presence of the person so requiring: s. 6 (4).

Moreover, any person who is carrying bread for sale on delivery, must, if so required, permit an inspector to weigh the bread: s. 6 (5).

MILK.

Except in the case of dried or condensed milk, milk may not be sold except in quantities of a half-pint or multiples thereof, and the provision applies equally to skimmed and separated milk, pasteurised milk, and milk subjected to any other process: s. 7.

None of the above provisions, with regard to the sale of butcher's meat, bread or milk, apply in the case of the sale of any such article for consumption on or at the seller's premises, or in the case of sale for petty amounts.

It is an offence for any person to act in contravention of any provision in the Act: s. 11 (3), but obstructing an inspector of weights and measures, and failing to provide a suitable weighing machine, are made special offences: s. 11 (1) and (2).

Where any proceedings are instituted under the Act in respect of any short weight or measure, inconsiderable variations in the weight or measure of any single article are to be disregarded, and the average weight or measure of a reasonable number of the articles of the same kind is to be taken: s. 12 (1).

It may be convenient, in this connexion, to examine the various defences open to a person against whom proceedings may be taken under the Act.

Bona fide mistake or accident, where reasonable precautions are taken to prevent any deficiency, is a defence: s. 12 (2), and likewise it is a sufficient answer to the charge to show that the deficiency is due to unavoidable drainage or evaporation: s. 11 (3).

Again, where an employer or principal is charged, liability may be avoided by proving due diligence on the part of such employer or principal to enforce the execution of the Act, and that the offence has been committed by a third person without the consent, connivance or wilful default of such employer or principal. When this defence is raised, however, it is essential that not less than three days notice should be given to the prosecution of intention to have the real offender brought before the court at the time of the hearing: s. 12 (5).

In conclusion it should be noted that prosecutions under the Act can only be instituted subject to certain conditions. Thus, no prosecution can be instituted except by or on behalf of the Director of Public Prosecutions, a police authority, or a local authority: s. 12 (7), and, except in the case of a prosecution for obstructing an inspector, prosecutions *against retailers* cannot be instituted after the expiration of twenty-eight days from the commission of the offence, nor can they be instituted unless a notice in writing of the date and nature of the alleged offence has been served within seven days of the commission of the offence on the defendant, and a reasonable opportunity has been given him, in the case of alleged deficiencies, of checking the weight, measure or number of the articles, in respect of which the proceedings are brought: s. 12 (6).

A Conveyancer's Diary.

Legislative Interference with Contract.

One phase of modern legislation which gives us grave concern is the repeated attempts by Parliament to regulate private contracts. We do not hold the view that such legislation must necessarily be bad, nor is it our opinion that contractual rights are so sacred as to be altogether beyond state control.

From time to time abuses arise that must be remedied, and these abuses can often be remedied by legislative action only.

These, however, are exceptional cases, which may require exceptional treatment, and such action should be strictly limited to setting right the abuses without interfering more than is absolutely necessary with contractual rights.

Every contract is based on give and take, and it is seldom possible for an outside body to interfere without upsetting the delicate adjustment of balance between profit and loss.

All that Parliament can do usefully is to see that the law does not unduly favour either party.

The latest example of the type of legislation is the Landlord and Tenant Bill, now before Parliament. This Bill has been explained on other pages, and we intend here to deal with it generally.

The leasehold system, whatever its disadvantages may be, has borne an essential part in our industrial development.

The landlord supplies the initial outlay on the premises or the land, and so enables the business tenant to apply more of his resources towards development of the business.

If this system is to continue the landlord must be given reasonable security for his money, so that he may be encouraged to let his property on easy terms and the tenant, besides having an assured security for the term of his lease, must be encouraged to keep his business up to date. This can only be done by giving the tenant a semi-permanent interest in his improvements, while at the same time protecting the landlord from suffering damage to his reversion or to his adjoining property by reason of such structural alterations as may be necessary to effect these improvements.

So far as the Landlord and Tenant Bill effects these objects we give it our full support. We also agree that the measure of damages for breach of covenants to repair should be the damage to the reversion.

It is clearly wrong that an outgoing tenant should be chargeable with dilapidations where the landlord intends to pull down the premises at the end of the tenancy.

We have no quarrel with the provisions of s. 14 as to covenants not to assign or against making improvements, without licence.

There are, however, two points about this Bill to which we are strongly opposed. We think that if these points are not eradicated from the Bill, before it becomes law, they will be the cause of immense damage to the leasehold system.

The first point is that the Bill sets up a tribunal with powers far in excess of those which ought to be given to any court except a court of law.

Most, if not all, of the cases provided for by the Bill could be dealt with as easily by the High Court or the county courts as by the proposed tribunal.

The amount of money involved in the proceedings before this tribunal will often be very great and, if clause 5 is not amended, the decisions of this tribunal will even affect the landlord's right to deal with his reversion.

These decisions will involve the hearing of complicated and often conflicting evidence.

To deprive the parties to these proceedings from the protection provided by the ordinary courts of law may give a shattering blow to the security of both parties.

We think that it would have been preferable for these cases to have been decided by a judge with, if thought desirable, the assistance of an assessor appointed by the President of the

THE SOLICITORS' JOURNAL

AND WEEKLY REPORTER

Published every Saturday. *Price One Shilling*

IMPORTANT NOTICE.

In our issue of 30th April we shall publish a SPECIAL ARTICLE by

Sir BENJAMIN L. CHERRY, LL.B.

(one of the Conveyancing Counsel to the Court), entitled:

"The Law of Property Acts":

A RETROSPECTIVE REVIEW.

Other important subjects dealt with by eminent writers will include:

"The Position of Vendors and Purchasers in relation to Deposits on the Sale of Land," by Mr. J. F. W. GALBRAITH, K.C., M.P.

"The Trade Disputes and Trade Unions Bill," by Mr. E. P. HEWITT, K.C., LL.D.

"Some Legal Aspects of Town Planning," by Mr. RANDOLPH A. GLEN, M.A., LL.B. (Editor of "Glen's Public Health").

"The Roman Catholic Relief Act, 1926," by Mr. T. BOURCHIER CHILCOTT, of Lincoln's Inn.

"The Companies Bill," by Mr. A. J. FELLOWS, B.A., of Lincoln's Inn.

&c. &c.

With the same issue will be presented a Portrait of The Right Hon. Sir WILLIAM BULL, Bart., P.C., M.P. (President of the Solicitors' Benevolent Association.)

Editorial Offices: 94-97, FETTER LANE, E.C.4. **Telephone: HOLBORN 1853.**

Surveyors' Institution. Reference of these cases to the tribunal might have been allowed as an alternative at the election of both parties.

The other point to which we are opposed is contained in clause 5.

This clause gives, in certain circumstances, a right for the tenant to demand a new lease where the compensation to which he may be entitled does not compensate him for the loss he will sustain by reason of the removal of his business.

We regard this clause as revolutionary.

It gives to a tenant what is, in effect, a right in the reversion to which his lease did not entitle him.

This provision seriously affects the power of a landlord to deal with the reversion.

It is true that the tenant's rights are restricted and that the landlord, as an alternative to granting a new lease, may offer to sell his reversion to the tenant. This sale, however, is not to be subject to competition; it must be made at a price to be fixed by the tribunal.

If this provision is passed, we fear that tenants will find a difficulty in obtaining easy terms on the granting of new leases.

We hold no brief for harsh landlords, but we think that such far-reaching changes in the leasehold system as are contained in this Bill require most careful scrutiny.

We urge all those concerned to study this Bill carefully while it is still before Parliament and out of their experience to suggest such amendments as will render the Bill an effective protection to business tenants without imposing an unnecessary and harmful infringement on the rights of landlords.

Landlord and Tenant Notebook.

Recovery of Possession of Part of a Dwelling-House.

One is constantly being asked in practice the question whether a landlord, if he is not entitled to recover possession of the *whole* of the premises occupied by a statutory tenant, may not be entitled to be awarded possession of at least a *portion* of the premises. There is no doubt but that, in the vast majority of cases, landlords suffer great hardships in this respect, but as the law at present stands it is exceedingly difficult for them to obtain possession, unless they can show that they became the landlords *prior to the 5th May*, 1924, in which case they need not show the existence of alternative accommodation, if they can satisfy the court that, having regard to all the circumstances of the case (including of course, any available accommodation), that greater hardship would be caused by refusing to grant an order for possession than by making it (s. 1 of the Prevention of Eviction Act, 1924).

This plea of greater hardship is not, however, available to a landlord who has become landlord or owner of the premises *subsequently to the 5th May*, 1924, and such a landlord, if he is proceeding under para. (*d*) of s. 4 " 5," (1) of the Rent Act of 1923, must prove, *inter alia*, the existence of alternative accommodation.

Notwithstanding that alternative accommodation in other premises cannot be shown to exist, the case is not always necessarily hopeless, at any rate, so far as possession of a *part* of the premises is desired.

In advising a landlord, the first question to which the practitioner should direct his attention is whether the statutory tenant is in occupation of the whole of the premises or of only a part thereof. It will be found that in a good many instances a part or parts of the premises happen to be in the occupation of other persons as sub-tenants. If that be the case it will be material to inquire into such sub-tenancies, and to discover the *date* at which they were created. If, of course, the sub-tenancy has been created while the sub-lessor was a contractual and not a statutory tenant of the lessor, then the sub-tenancy will be protected by virtue of s. 15 (3) of the Rent Act of 1920. Section 15 (3) provides that:—" Where the interest of a tenant of a dwelling-house to which the Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been *lawfully* sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant, if the tenancy had continued." The sub-tenant will therefore, in such a case, be protected to exactly the same extent as he would have been had he in fact rented the premises directly from the lessor of his own immediate lessor.

It may be, on the other hand, that the lessee, after his tenancy has been determined by notice to quit, has sub-let a portion or portions of the premises to other persons. Now, although the point was left open in *Reeves* v. *Dean*, 1924, 1 K.B. 685, as to whether a statutory tenant had the power to sub-let, there can be no question that the grounds on which the Court of Appeal held in that case that the statutory tenant could not assign (those grounds being that the statutory tenant had no right or estate, his claim to remain in possession being only a *personal* one as between him and his landlord), equally apply to a sub-letting by the statutory tenant, and, in fact, there is now a *direct* decision on the point, i.e., the case of *McPhail* v. *Ashton*, L.J., C.C.R., 25th September, 1926, in which a county court judge held that the statutory tenant had no power of *sub-letting*, and on that ground awarded to the landlord possession of the premises, as against the person to whom the statutory tenant had purported to sub-let them.

What then is the position where a statutory tenant has sub-let a portion of the premises and is in occupation of the remainder? The idea would seem that, inasmuch as a statutory tenant has no right to sub-let, an action for possession of the part so sub-let should be launched against the statutory tenant. If this course was adopted, however, it would be fruitless. Notwithstanding that a landlord is not prevented from claiming a portion only of the demised premises (see *Salter* v. *Lask*, 1923, 2 K.B. 798, 801), it has been decided by a Divisional Court that the fact that a statutory tenant has sub-let a portion of the house to a sub-tenant is no ground for granting to the landlord an order for possession against the statutory tenant. The case which decided this is *Campbell* v. *Lill*, 42 T.L.R. 397, the facts being that the statutory tenant had sub-let *part* of the premises and was in occupation of the remainder thereof (see also *Leslie* v. *Cummings*, 1926, 2 K.B. 417). It should be carefully noted, however, that the Divisional Court in *Campbell* v. *Lill* were careful to point out that they were not considering what the position would have been had the action been brought against the sub-tenant. In the latter event, it is clear that the landlord would have been entitled to an order for possession against the sub-tenant (see *McPhail* v. *Ashton*, *supra*).

Where, therefore, on an investigation of the facts, it appears that the statutory tenant has sub-let a part of the premises, the proper course, it is submitted, is for proceedings to be taken by the landlord *against the sub-tenant* to recover possession of the part of the premises sub-let to him.

In certain circumstances, moreover, proceedings might be taken against the statutory tenant himself, where the landlord requires possession of the premises for himself or his family, under para. (*d*) of s. 4, "5," (1), of the 1923 Rent Act.

The landlord should in the first instance ask his tenant to give him possession of a *part* of the premises, and he should be careful to see that his demands in this respect do not affect that portion of the premises still retained by the tenant in his own actual occupation. He should also offer his tenant a proportionate reduction of his rent, though this does not appear to be essential, since, in any event, the tenant would not be under any obligation to pay more than the proper

amount to be arrived at after apportionment (where necessary).

On the tenant's refusing to give up possession of the part demanded by the landlord, proceedings may be commenced under para. (*d*). In so far as the landlord is required to establish the existence of alternative accommodation, as is required by that paragraph, it will be sufficient for the landlord to say that he is providing the necessary alternative accommodation by allowing his tenant to remain in occupation of that portion of the premises which he is actually occupying.

This is exactly what happened in the case of *Thompson* v. *Rolls*, 1926, 2 K.B. 426, the defendant in that case, against whom an order was made, being the tenant of a seven-roomed house, five of which she occupied herself and two of which she had sub-let furnished (these rooms, of course, not being protected by reason of their being let furnished: *Prout* v. *Hunter*, 1924, 2 K.B. 736). The Divisional Court affirmed (in substance) the order for possession made by the county court judge, which was an order for possession, confined to the two rooms sub-let by the defendant, subject to the condition that the rent payable by the defendant should be reduced to the proper amount.

The *ratio decidendi* of this case is put very clearly in the judgment of Rowlatt, J. (1926, 2 K.B., at pp. 432, 433):—"Under the statute, the plaintiff must prove two things. First, she has to prove that the dwelling-house is reasonably required for occupation as a residence for herself or for some person *bonâ fide* residing with her. The plaintiff has only proved that she wants the two rooms, and it is said that the plaintiff has not complied with the requirements of the statute and proved that she reasonably requires the premises; . . . The plaintiff told the defendant that she wanted the two rooms for her own occupation and the defendant said that the plaintiff could not have the two rooms. The defendant thereby put upon the plaintiff the obligation of saying that she requires the seven rooms and then the defendant says that the plaintiff has not proved that she wants them. *The plaintiff's answer is that if she cannot have the two rooms without obtaining an order for possession of the seven rooms, then she reasonably requires the seven rooms in order to get possession of the two rooms* . . . The next thing the plaintiff has to prove is that there is alternative accommodation available for the defendant. *Ex hypothesi* the plaintiff is getting possession of the whole house, but *eo instanti* it appears that the defendant can have the five rooms that she now occupies at a rent which the learned county court judge has found to be reasonable. Why is not that alternative accommodation? I think it is. *It is true that the alternative accommodation is not in another house, but the defendant gets the same five rooms in the house which she is now occupying. I do not see why that is not alternative accommodation.*"

Can the principle of *Thompson* v. *Rolls* be extended to every case? It is to be observed that the sub-letting, in *Thompson* v. *Rolls*, by reason of its being furnished, was not a letting which was protected, and it is quite clear that a sub-letting by a statutory tenant, even though it was unfurnished, would come within the same category. What is the position, however, where the statutory tenant takes in lodgers? The question is indeed a difficult one, but there is no reason why the principle of *Thompson* v. *Rolls* should not apply. Some of the dicta of Rowlatt, J., in the above case appears to be in support of this view. Thus, the learned judge says, in *Thompson* v. *Rolls*, 1926, 2 K.B. 431, 432: "Here is a seven-roomed house, with the owner wanting two rooms for her own occupation, and the tenant wanting five rooms for her occupation and, *primâ facie*, one would think that there was room for both in the house. But the reason why the defendant objects to that arrangement is that she makes a profit out of letting the two rooms. *It is quite clear that the case is outside the mischief which the Rent Acts were intended to remedy. It is not a case of an unfortunate tenant being turned out of the only accommodation she can get; it is a case of an owner being kept out of rooms which the tenant does not want herself to occupy, but out of which she makes a profit.*"

However that might be, the position as far as sub-tenants, whose tenancies were created at a time when their sub-lessors were *contractual* and not statutory tenants, are concerned, appears to be quite different since such sub-tenants are *themselves* entitled to the protection of the Rent Acts, not only as against their own immediate sub-lessors, but also as against the landlords of such sub-lessors.

Books Received.

Judicial Statistics of England and Wales, 1925. *Criminal Statistics: Statistics relating to Criminal Proceedings, Police, Coroners, Prisons and Criminal Lunatics for the Year* 1925. Cmd. 2811. Medium 8vo. 222 pp. (with Index). H.M. Stationery Office. 4s. net.

Bona Vacantia under the Law of England. F. A. Enver, M.C., M.A., LL.M., Cantab, of Gray's Inn. Medium 8vo. 130 pp. with Index. H.M. Stationery Office. 7s. 6d. net.

The Administration of Assets in a Nutshell, as modified by Recent Legislation. Marston Garsia, Barrister-at-Law. 1927. Demy 8vo. pp. v and 39. Sweet & Maxwell, Ltd., Chancery-lane. 3s. 6d. net.

International Survey of Legal Decisions on Labour Law. 1925. Medium 8vo. pp. xii and 267. International Labour Office, Geneva. 8s.; 2 dollars.

The Workmen's Compensation Act, 1925 (*as amended by the Workmen's Compensation Act*, 1926) *and the Workmen's Compensation Rules*, 1926, *and Regulations relating thereto*. With a complete Index and Tables showing where the corresponding sections of the repealed Acts are to be found in the 1925 Act, and *vice versa*. By M. Turner-Samuels (of the Inner Temple) and Donald Geddes, B.A. (Oxon.), LL.B. (of the Middle Temple). Royal 8vo. pp. 282. The Solicitors' Law Stationery Society, Ltd., 104-107, Fetter-lane, E.C.4, 19 & 21, North John-street, Liverpool, and 66, St. Vincent-street, Glasgow. 7s. 6d. net.

A Digest of the Law of Bills of Exchange, Promissory Notes, Cheques and Negotiable Securities. Sir M. D. Chalmers, K.C.B., C.S.I. Demy 8vo. pp. liv and 500 (with Index). Stevens & Sons, Ltd., Chancery-lane. 25s. net.

International Law. By The Rt. Hon. The Earl of Birken-head. Sixth edition by Ronw Moelwyn-Hughes. Medium 8vo. pp. xxvi and 460 (with Index). 1927. J. M. Dent and Sons, Ltd., London and Toronto. 21s. net.

Minnesota Law Review. Journal of State Bar Association. Vol. II, No. 5. April, 1927. The Faculty and Students of the Law School of the University of Minnesota. 60 cents.

Stone's Justices' Manual. Being the yearly Justices' Practice for 1927, with Table of Statutes, Table of Cases, Appendix of Forms, and Table of Punishments. Fifty-ninth edition. F. B. Dingle. Large Crown 8vo. pp. ccli and 2012 (with Index). Butterworth & Co., Bell-yard. Thick or medium edition, 37s. 6d. Thin edition, 42s. 6d.

Workmen's Compensation and Insurance Reports. Containing cases germane to the Workmen's Compensation, Employers' Liability Insurance (all branches except Marine) and National Insurance. 1927. Part I. G. T. Whitfield-Hayes. pp. ix and 128. London: Stevens & Sons, Ltd., Chancery-lane; Sweet & Maxwell, Ltd., Chancery-lane. Edinburgh: W. Green & Son, Ltd. Annual Subscription 30s., post free.

The Journal of The Divorce Law Reform Union, 55, Chancery-lane, W.C.2. No. 82, Vol. VII. April, 1927. Quarterly, 2d.

W. P. H.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of the paper only, and be in triplicate. Each copy to contain the name and address of the Subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

TRUSTEES FOR SALE—ADMINISTRATOR OF TENANT IN COMMON—*Functus Officio*—INFANT BENEFICIARIES—PAYMENT OF INCOME.

749. *Q.* W G who was absolutely entitled (1) as equitable tenant in common to a share in settled land, and (2) as one of three beneficiaries of proceeds of a trust for sale subject to payment of certain annuities, died in 1925. The trustees of both (1) and (2) are S T and A C. By his will W G left the whole of his residuary estate, including his interest under (1) and (2), in equal shares to his nieces, two of whom are infants. Administration *cum testamento annexo* was granted to S T in 1925. All the deceased's assets and liabilities have been realised and paid and there is a balance in the hands of S T as administrator who, however, refuses to appoint trustees under s. 42 of the Administration of Estates Act. S T refuses to sign cheques for the deceased's share of the trust income, unless they are made payable to him, claiming that he is entitled to receive and disburse the money as administrator. What is A C's position.

A. As to property (1), if W G's interest as tenant in common was absolute and passed under his will, his share at least was not settled However, the legal estate being vested in trustees, and the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (2), not applying, 1 (1) did so if 1 (3) is excluded, and therefore property (1), like property (2), is now held on trust for sale. If S T has fully administered W G's estate his functions as administrator have ended, and he should assent to the bequest of the proceeds of sale of the properties in W G's will, if he has not already done so. The property is an equitable estate in land, and the proceeds of sale thereof, and the assent may be implied or by parol, as before the new legislation. If he has assented, the opinion is here given that A C must treat the nieces as direct beneficiaries. If he has not done so, his claim to receive the income as administrator is well founded. The issue will depend on the facts, and the law will be found in *Attenborough* v. *Solomon*, 1913, A.C. 76, *Wise* v. *Whitburn*, 1924, 1 Ch. 460, and other cases collected in the "Empire Digest," Vol. 23, pp. 390-392. If any payments of income have been made by S T to any adult niece, the opinion is here given that assent to all must be implied, for an assent to one of several would be inconsistent with the administrator's duty. If assent has not been given, the adult nieces are now in a position to demand the reason from S T, and A C, as trustee for the infants, may be deemed to have a similar right. A C should not therefore sign cheques in favour of S T unless the latter can prove that the administration of W G's estate is not "*plene*," and why this is so after more than a year.

EXECUTORS—PRE-1926 IMPLIED ASSENT—ACTS AMOUNTING TO.

750. *Q.* A, whose will was proved in 1915, appointed B and C executors and trustees, and devised (*inter alia*) a leasehold house to trustees upon trust to pay the rent to B during widowhood and after death or re-marriage upon trust for sale. B died in March, 1926, no vesting assent was ever executed. In July, 1926, C appointed D and E to be new trustees jointly with himself. C, D and E are now selling the property as trustees. Their solicitors state that no assent, express or implied, has been made to the devise until the appointment of new trustees, and that, therefore, the estate did not vest in the tenant for life, and it is unnecessary to obtain special representation to her estate. They state, however, that the income between 1915 and 1926 was received by the "executors" and paid over naturally to the tenant for life.

(1) Does not the payment of the rents to the tenant for life show an implied assent to the devise?

(2) In spite of the absence of a vesting assent, was not the legal estate vested in the tenant for life, and should not special representation have been taken out on her death?

(3) Can the trustees show a title until this has been done, and a vesting assent made in their favour.

A. (1) The contention of the vendor's solicitors is *primâ facie* untenable and opposed to *Wise* v. *Whitburn*, 1924, 1 Ch. 460. If the payment of the rents to the tenant for life was in respect of her beneficial interest, the implied assent is established.

(2) Yes. The legal estate vested in the tenant for life by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and it will vest in her special personal representatives when constituted.

(3) The legal estate is either inchoate or remains in the probate judge under the A.E.A., 1925, s. 9, until the special representatives have proved pursuant to the A.E.A., 1925, s. 22 (1), or the J.A., 1925, s. 162, according as B died testate, or intestate. Once they have proved, however, they can either sell as personal representatives, or assent to themselves as trustees for sale: see S.L.A., 1925, s. 7 (5).

SETTLED LAND—NO TENANT FOR LIFE—ADDITIONAL POWERS—TITLE.

751. *Q.* X, who died in 1915, by his will, appointed his sons A and B executors, and A, B and C trustees thereof, and declared that his trustees should be trustees thereof for purposes of S.L.A., 1882 to 1890. He gave, devised and appointed (subject to a discretionary power in favour of his executors, to mortgage or charge same for purposes of carrying on his business) all his real estate and leasehold property (thereinafter called "his trust estate") unto his trustees, upon trust that his trustees should, as to his freehold house, known as "S," or such other freehold house of his, of equal weekly value, as his trustees should think fit, permit his (testator's) sisters, Y and Z, during their joint lives, and the survivor of them during her life, to have the use, occupation and enjoyment thereof free from rent, rates, taxes, insurance, repairs and other outgoings whatsoever, and out of the income of his trust estate to pay such outgoings in respect thereof not payable by any lessee or tenant, including costs of repairs and insurance and interest on any mortgage debts, charges or other incumbrances thereon, and any moneys required for payment of rents and compliance with covenants in leases of leasehold properties, and out of the net income of his trust estate, after making the aforesaid payments (thereinafter called "the net income"), in the first place, to pay a certain annuity to his (testator's) wife for life, and in the second place, to pay certain annuities to testator's said two sisters for life, and an annuity to another relative if and when he attained a certain age during remainder of his life, subject to the said annuities. Testator directed his trustees to retain two-thirds of the net income of the trust estate, and from time to time apply same in or towards redemption of incumbrances affecting his trust estate until all such incumbrances should have been paid or satisfied or until expiration of twenty years from his death, whichever event first happened (thereinafter called "the period of suspense"), and from time to time during the period of suspense to accumulate such part of the net income until

sufficient sums available for discharge of any incumbrances. During the period of suspense the trustees were to hold the remaining one-third of the net income of the trust estate (subject to the said annuities) upon trust for and equally between such of his (testator's) children as were for the time being alive and such of the issue for the time being alive of any child who should for the time being be dead (whether dying in testator's lifetime or after his death), such issue to take *per stirpes* in equal shares with power for the trustees to apply infants' income for their maintenance, etc. From and after the period of suspense, if his (testator's) youngest child for the time being alive should not have attained twenty-one years the trustees were, until such youngest child attained twenty-one, to hold all the net income (subject to the said annuities) upon the like trusts as were declared concerning such one-third thereof and from and after the period of suspense or after his youngest child for the time being living attained twenty-one whichever event should last happen (thereinafter called "the period of division"). Testator directed his trustees to hold the capital and future income of his trust estate (subject to the said annuities and to any interest by his will given to his wife and his sisters or any of them in any part thereof), upon trust for and equally between such of his children as should then be living, and such of the issue of any of his children then dead as should then be living and should then have attained or should afterwards attain the age of twenty-one years, or being a daughter have married, and their heirs, executors and administrators as tenants in common, such issue, and their heirs, executors and administrators taking only, and if more than one, equally between them, the share to which his, her or their parent would have been entitled if living at the period of division. Testator also provided that if any son of his died before the period of division without leaving issue surviving the period of division, but leaving a widow, such widow should be entitled to a certain sum which the trustees were empowered to raise by mortgage or charge of a competent portion of the trust estate. The will provided that shares of daughters should be retained by the trustees on trusts for daughters for life with remainder to their children, etc. The trustees were expressly empowered to partition, and to appropriate any part or parts of the trust estate; and to appropriate part to answer the said annuities. And the testator, notwithstanding the foregoing trusts, "authorised and empowered" his trustees in their uncontrolled discretion at any time after his decease and from time to time, to sell all or any part of his said real and leasehold property, freed and absolutely discharged from all the trusts and powers declared and contained in his will for payment of any annuities thereby given and from all other the trusts, powers and provisions therein declared and contained concerning his trust estate or any part thereof, and declared that no purchaser or intending purchaser or other person claiming through him should be concerned or entitled to see or enquire whether any annuitants were living or dead or otherwise as to any of the trusts, powers and provisions of that his will, or to require concurrence in any conveyance of any annuitant or other beneficiary, or to see to application of the purchase money or as to the propriety of any sale or be affected by notice that any annuity was still subsisting. Moneys arising from sales was to be applied in discharge of incumbrances, or invested and held on like trusts as declared concerning the capital and income of the trust estate. The said executors, A and B, proved the will in 1915, and A, B and C, as trustees of the will, have now contracted to sell one of the freehold houses forming part of the trust estate not that known as "S," but one in the same road, of equal value; vacant possession of which has been or will be given to the purchaser, for whom your querist is interested. On previous sales of parts of the "trust estate" made prior to 1st January, 1926, A, B and C have sold under the overriding power of sale given by the will, and it has been recited in the conveyances that A and B, as executors, had assented (no separate written assent) to the gift to A, B and C as trustees, and it is expected this is the position regarding the present property, but enquiry has not yet been made thereon. It is not known to the purchaser's solicitor whether any of the annuitants are still living, or whether the "period of division" has yet arrived.

Having regard to the terms of the testator's will, and to the provisions of the new property statutes, how should sales of property forming part of the testator's "trust estate" now be effected?

A. The land is settled land. It stands limited to trustees in trust for persons by way of succession. There is, however, no tenant for life or person having the powers of a tenant for life, so that S.L.A., 1925, s. 23 (1), becomes applicable, and the trustees of the settlement have the S.L.A. powers. A vesting deed must be executed by them in their own favour. They can then exercise the powers conferred upon statutory owners by the S.L.A., 1925, and also all the powers conferred by the will upon the trustees thereof as if such powers were additional powers under s. 109 of the S.L.A., 1925: *ib.*, s. 108 (2).

COPYHOLDS—MINERALS AND MANORIAL RIGHTS—COPYHOLD ACT, 1894—ss. 21 & 23.

752. *Q.* (A) Your answer to *Q.* 650 is not quite clear. In this manor all enfranchisements of copyhold property prior to the commencement of the L.P.A., were made subject to the rights preserved to the lord of the manor by ss. 21, 22 and 23 of the C.A., 1894.

(1) Have assurances of property enfranchised subject as aforesaid to be registered with the steward upon every assurance thereof until compensation is paid to the lord in respect of the rights thus reserved?

(B) The majority of compensation agreements that are now being entered into exclude the rights preserved to the lord of the manor by the 12th Sch.

(2) In view of this exclusion must all assurances made subsequent to the date of the compensation agreement be produced to the steward for registration until the matters preserved by the 12th Sch. have been extinguished?

A. (1) No, because the provisions in the L.P.A., 1922, as to registration of assurances with the steward only apply to land which was actually copyhold on 31st December, 1925, and not to that previously enfranchised, see ss. 128 (1) & 129 (1).

(2) Assurances of land enfranchised before 31st December, 1925, need not be produced to the steward. Assurances of land enfranchised by virtue of the provisions of the L.P.A., 1922, must be produced to the steward as and when required by that Act.

EXECUTORS—ALSO TRUSTEES FOR SALE—PROCEDURE ON SALE.

753. *Q.* Testator, who died this year, appointed, A and B executors and trustees. (1) He gave and devised on trust for sale Green Close, and after investment the interest on the net capital he bequeathed to H for life, and on her death the capital amongst her children, B being one of them. (2) Closes Yellow he gave and devised direct to the children of his late brother George. There are three only (now all of age and who are equitably entitled to one-third of the same, A being one of them. Can A and B as the executors sell the property (1) and also (2), and give a good title in each case without troubling any other person interested? All parties are desirous for the conversion into money. Estate and succession duties are still to pay, and debts also, but probably the personalty would cover these?

A. A and B can as executors sell any property of their testator by virtue of their offices at any time before assent: see the A.E.A., 1925, s. 36 (8), and give good title, subject to sub-s. (6). But *vis-à-vis* the beneficiaries, they should not do so if they can pay debts, etc. and death duties otherwise. Green Close they can either sell as executors, or, after formal assent to themselves, as trustees. They will be safe in selling

Close Yellow as executors if the beneficiaries so request them in writing, and this is likely to be the cheapest and quickest method.

WILL—WIFE TENANT FOR LIFE AND SOLE EXECUTRIX—OPTION TO SELL TO CHILD AFTER WIFE'S DEATH—SALE BY HER TO CHILD—PROCEDURE.

754. *Q.* A dies in 1922, leaving a will which deals with real property, value about £30. The following is an extract from A's will: "I give and bequeath to my wife B for her sole use and benefit during her lifetime all my real estate . . . and at her death I desire my freehold share on X allotments and any other real estate I may die possessed of shall be sold or taken by one of my children at a valuation satisfactory to all the others and the proceeds to be shared equally among my surviving children. I appoint my wife B sole executrix." Since the death of her husband B has been in possession of the real estate. Probate was granted in 1926 to the executrix. The deceased's estate was less than £100. The executrix wishes to sell the land to one of her children and we are acting for all parties. Shall we be in order in making the executrix convey as personal representative? If not, what course shall we adopt?

A. The wife may sell and give good title as personal representative: see A.E.A., 1925, s. 36 (8), but should not do so unless all her children are *sui juris* and so request her in writing. She could sell as tenant for life without such request if she appointed a co-trustee under the S.L.A., 1925, s. 30 (3), and both made a vesting assent in her favour and received the purchase money. The option given by the will is not yet exercisable, but its existence would not hinder the tenant for life selling as such: see s. 106, and *re Flint*, W.N., 1827, 85. Since the estate is so small, probably the first course indicated will be the most convenient.

BARE TRUSTEES OF SETTLED LAND—APPOINTMENT—PROCEDURE.

755. *Q.* We are concerned with an appointment of new trustees of a personalty settlement executed on the marriage of A and B in the year 1899. Part of the trust funds consisted of freehold ground rents some of which were conveyed to the trustees of the settlement by the wife's father by conveyances of even date with the settlement, and others were shortly after (in pursuance of a covenant in the marriage settlement) also conveyed by him to the trustees. These conveyances were taken in the names of the trustees, their heirs and assigns for ever as joint tenants without disclosing any trusts or even the fact that they were trustees at all. Since the date of the settlement there has been an appointment of new trustees, and the freehold ground rents were passed to the new trustees in the same way without disclosing any trusts. Are we right in thinking that there will only be two deeds required, viz.: (1) an appointment of new trustees (equitable) of the proceeds of sale on the lines of Precedents 1 and 2, pp. 433 and 439, Prideaux, Vol. 3, and (2) a conveyance based on form 5, p. 446, Prideaux, Vol. 3, of the freehold ground rents from the sole surviving trustee to himself and two new trustees, such conveyance being made supplemental to the various prior conveyances which were made on the last appointment of new trustees of the marriage settlement. We shall be glad to know at your earliest convenience, as the matter is urgent, whether you concur in our suggestions, and also whether we can dispense with the appointment of new trustees of the conveyance, form No. 4, p. 443, Prideaux, Vol. 3.

A. Since there was no trust for sale, either by reference to the settlement or otherwise, neither of the precedents on pp. 443 and 446, *supra*, appear to apply. Assuming either husband or wife was alive on 1st January, 1926, and that they took successive life interests, the land was settled land within the S.L.A., 1925, s. 1 (1) (i), and accordingly vested in the tenant for life under the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*). The former trustees have no function, unless they are trustees for the purposes of the S.L.A., 1925, within s. 30 (1) (i) to (iv). If not, possibly all beneficiaries may be *sui juris* and can appoint under sub-para. (v). The new trustees can be appointed as trustees for the purposes of the Act, either under sub-para. (v) or under the T.A., ss. 64 (1) and 36 (1) if the old trustees were so, and a vesting deed should be executed under the S.L.A., 1925, 2nd Sched., para. 1 (2). The proposed appointment of the trustees of the pure personalty will be in order.

UNDIVIDED SHARES—SALE OF INTEREST OF ONE OF TWO TO THE OTHER.

756. *Q.* A and B were the owners of freehold property in fee simple in equal shares as tenants in common. A died on 18th December, 1925, having by his will devised all his real estate to B and C in equal shares as tenants in common and appointed them executors. C predeceased A, and the share and interest of the property devised to her therefore lapsed and passed to D as A's heir-at-law. B proved the will in January, 1926, and all duties, etc., have now been paid, but no assent has been given. D has now agreed to sell his share and interest in the property to B. In whom is the entirety vested and what will be necessary to be done to carry out the above agreement and vest the property in B absolutely?

A. A's estate not being wound up on 31st December, 1925, the L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (4), applied on 1st January, 1926, and the property is therefore vested in the Public Trustee. He should be divested under para. 1 (4) (iii) (see L.P. (Am.) A., 1926, Sched.) by the appointment of B as trustee by B with or without D, and D should convey his equitable interest to B. After that B would be sole trustee for sale and sole beneficiary, which is equivalent to being owner in fee, see answer to *Q.* 244, p. 541, vol. 70.

S.L.A., 1925, TRUSTEES—RECEIPT—NUMBER OF TRUSTEES.

757. *Q.* By a settlement created by the will of a testator dying before the commencement of the S.L.A., 1925, an express power of sale was conferred on the sole trustee thereof. It is assumed that the power devolved upon the tenant for life under s. 108 (2) of the S.L.A., and that by the joint effect of ss. 13 and 18 of that Act a conveyance to a purchaser would not take effect unless an additional trustee were appointed and received the purchase money. Difficulty is felt as to whether, having regard to the opening words of s. 109 (1), "Nothing in the Act precludes," it is now in any way possible to confer on a tenant for life a power of sale which to be effective would not require two trustees. Has the omission of the words "Unless a contrary intention appears in the settlement," which occurred in s. 57 (2) of the Act of 1882 from s. 109 (2) of the Act of 1925 effected any change in the law?

A. Assent is expressed to the conclusions stated in the second paragraph of the question. Section 18 (1) (*c*) of the S.L.A., 1925, however, applies, "notwithstanding anything to the contrary in the trust instrument," and is reconcilable with s. 109 (1) if the powers of the latter sub-section are construed as those given to the body of trustees as a whole. On this footing the veto in the Act against the receipt of capital money by one trustee (not being a trust corporation) cannot be avoided, a result which obviously accords with the intention of its framers.

SETTLED LAND—DEATH OF TENANT FOR LIFE—FREEHOLDS AND COPYHOLDS—VESTING.

758. *Q.* L B (testator) died in 1899, having made his will appointing four executors and trustees, of which P B (his wife) was one. Testator devised all his real estate, consisting of freehold and copyhold dwelling-houses and lands, to his wife for her life, and on her death he devised the various dwelling-houses and lands specifically to his five children named therein. The will was proved by the four executors, three of whom since died, leaving P B sole executor and trustee surviving. P B, by deed of appointment made in

1926, appointed A B and S B (sons of testator) trustees in place of deceased trustees, to act along with the surviving trustee, and also as trustees for all the purposes of the S.L.A., 1925. A vesting assent was also made in 1926 by the three trustees, vesting the property in P B, the tenant for life. P B died in February, 1927, having made a will, in which she appointed H B (her son) sole executor, and devisee of her own real estate, no mention being made of the settled estate in any way. On the death of L B in 1899, neither the trustees nor the tenant for life were admitted on the court rolls of the manor in respect of the copyhold property, the last admittance being the testator. What steps should now be taken to vest the freehold and copyhold properties in the respective devisees? Is it requisite that the trustees of L B's will should apply for grant of probate limited to the settled estate, or can H B, as executor of P B's will, when proved, vest the legal estate in the devisees of L B's will? With regard to the copyhold property, what documents will require to be recorded with the steward of the manor to complete the title of the devisees, and will he be entitled to double fees by reason that the trustees or the tenant for life had not been admitted on the testator's death?

A. On 1st January, 1926, the freeholds vested in fee in P B, by virtue of the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*), and she was the person who had the best right to be admitted as copyholder within the L.P.A., 1922, 12th Sched., para. 8 (*b*). At her death, therefore, both freeholds and former copyholds were vested in her, but, in accordance with the latter paragraph she or her estate is liable for the fines and fees. The probate grant to her executor will presumably except settled property, for which a separate grant will be required, A B and S B as trustees for the purposes of the S.L.A., 1925, being entitled to it under the A.E.A., 1925, s. 22 (1) (assuming, which is not made clear, that P B had power to appoint them for that purpose), unless they renounce. After paying or providing for death duties they will assent or convey to the persons entitled, see S.L.A., 1925, s. 7 (5). In respect of the former copyhold, such assent or conveyance comes within s. 129 (9) of the L.P.A., 1922, and makes the transaction subject to the provisions of sub-ss. (1) and (2).

SETTLED LAND—LIFE TENANTS—JOINT OR UNDIVIDED SHARES—PROCEDURE.

759. *Q.* Testator, F W V (who died in 1911), appointed N S, his daughter S A E T, and his nephew W F V, trustees and executors of his will. After various bequests and devises, testator devised to his trustees B cottage, R cottage and two rows of houses, upon trust to let the same and generally manage the property according to their discretion; and testator directed his trustees to stand possessed of the net rents, upon trust to pay to S A E T during her life the sum of £80 per annum by quarterly payments; and upon further trust out of the net rents to pay to his wife, E V, during her life the sum of £16 per annum by quarterly payments; and testator directed his trustees during the lifetime of S A E T to make up an account every year at Christmas showing rents received and outgoings paid, including said annuities in respect of said properties, and to divide the net balance equally between S A E T, his granddaughter, D S T, and his brothers, J C V and A V, or such of them as should be living at the date of the making up of the account. Testator then devised certain other properties "and all his real estate (if any) and all his personal estate not thereby otherwise disposed of to his trustees, upon trust for sale and payment thereout of all debts, funeral and testamentary expenses, etc." Testator directed that his trustees should, upon the death of S A E T, sell and convert into money the whole of his real and personal estate, and after payment of costs and expenses pay and divide the net proceeds equally between his nephews, sons of the said J C V and A V, and his granddaughter, D S T. J C V has since died. The widow, E V, is still alive. It is now desired to sell R cottage, an advantageous offer having been received. S A E T is still alive, and there is therefore no immediate binding trust for sale, but it would appear that S A E T, D S T and A V are joint life tenants of this cottage, subject to the said annuities, and it is presumably necessary for the trustees to execute a vesting assent in favour of such life tenants and they would then convey the cottage to the purchaser under the powers given to life tenants (overreaching the annuities). Is this the correct method of dealing with the matter, and, if not, how should the sale be effected?

A. A question might be raised as to whether the life gift to the four persons named was in joint tenancy or as tenants in common, having regard to the word "equally." However, since the addition of para. 4 to Pt. IV of the 1st Sched. to the L.P.A., 1925, by the L.P. (Am.) A., 1926, the issue is here of no consequence, and concurrence is therefore expressed with the conclusion to which the questioner has come, with the substitution of 'vesting deed' for 'vesting assent.'

TRUST FOR OR POWER OF SALE ARISING IN 1810—TITLE.

760. *Q.* Z died in 1810, having by his will devised his real estate unto and to the use of trustees, their heirs and assigns, in such terms that eminent conveyancing counsel advised about twenty years ago that no imperative trust was created for the sale of the lands devised, that a discretionary power only was given to the trustees to let or sell, and that there was an imperative trust to convey the lands unsold unto the beneficiaries as soon as the time for distribution arrived, which it did in 1838, and even if a reasonable time after that date was allowed it had long since ended. Further, that the power of sale was long since barred by the rule against perpetuities, and that an agreement made in 1833 put an end to all the trusts and powers of the will and amounted to an election by all the persons then entitled under the will to take the real estate thereby devised and then unsold "in specie." This opinion was obtained in 1908 on behalf of a purchaser of land under the will, and that purchaser was advised that the title of the trustees alone was bad, but that he could accept, and he accepted a conveyance from the trustees and beneficiaries under Z's will. We now act for this purchaser and are fully aware of the opinion referred to above. In 1926 our client's son purchased some building land from Z's trustees and took a conveyance of the land from those trustees in 1927. We did not act for the son in the matter of this purchase. We are acting for him on sale of houses built on the land purchased by him. The only difference between the title as it was on the occasion of the conveyance in 1908 and the conveyance in 1927 is that in an appointment of new trustees of Z's will dated December, 1925, to which all persons beneficially interested under the will were parties, and which contained the usual vesting declaration, there is a declaration and acknowledgment by the beneficiaries under Z's will "according to their estate and interest in the property that the property was held by the trustees upon the trust for sale contained in the will of the said Z, deceased, and should continue to be so held until the same shall be sold under such trust for sale or conveyed by the trustees for the time being of the said will to the person or persons for the time being beneficially entitled to the proceeds of sale thereof, and that no purchaser shall require the concurrence of any other person or persons in any conveyance of any part of the said hereditaments made in pursuance of such trust for sale." Has the purchaser got a good title under the conveyance of 1927, or did the legal estate become vested under the L.P.A., 1925, in the first four beneficiaries under the will of Z upon the statutory trusts, in which case it would appear to be still outstanding?

A. Assuming that the legal estate remained throughout in the trustees, they continued to be trustees, with or without a power of or trust for sale, and, although they may have been bare trustees, it was open to the appointors to appoint sub-

stitutes for them, in December, 1925. They went further, however, and by their declaration, in effect, created an express trust for sale if none then existed. This being so, s. 12 (1) of the T. Act, 1893, applied, and the property was vested in the new trustees upon trust for sale. Property vested in trustees for sale is excepted from the divesting provision of the L.P.A., 1925, 1st Sched., Pt. II, para. 3, and, even if there had been no trust for sale, para. 7 (*f*), together with Pt. IV, para. 1 (1), would have created one. Since the property was vested in trustees, this was neither a 1 (2) nor 1 (4) case on 1st January, 1926, though possibly a 1 (3) case if there was a tenant for life and reversioners *sui juris*. But, either under 1 (1) or 1 (3), the trustees held on trust for sale, and the title appears to be in order.

Correspondence.

Landlord and Tenant Bill.

Sir,—The Leasehold Reform Association cordially welcomes the proposals of the Government's Landlord and Tenant Bill, as being a first step, long overdue, towards the removal of leasehold injustices. It also appreciates the Home Secretary's assurance that this is not conceived as a party measure, and that those in charge of it will give friendly consideration to all amendments designed to improve it.

This latter promise is of the greatest importance, because the Government measure, while in many respects parallel to, if not in fact based on, the Landlord and Tenant Bill recently promoted by this Association, omits in its present draft certain reforms which leaseholders regard as quite the most fundamental of all.

To put it briefly, what the Government offers—and that to one class of leaseholders only—is compensation. What all tenants demand is security.

Tenants are not anxious to extort large sums of money from their landlords. They are enjoying the use of certain property belonging to their landlord—a site, a house, a shop—and for that property they are quite willing to pay the fair market rent. All they ask is that, paying such rent, they shall be allowed the undisturbed use of the property, for residence or industry, and be able to invest further capital of their own in improving and developing it for its best use, without being exposed to vexatious interference or extortion, or the periodic hazard of losing everything by being thrown out when the term of their current lease is reached. The Government Bill assumes disturbance as the normal event, and starts with the problem of compensations. This is like a bonesetter making the first item in his equipment a stock of wooden legs.

The principal reforms which leaseholders demand may be summarised as follows:—

First, a right to renewal of tenancy on fair terms. If this were given subject to reasonable safeguards, the vexed question of compensation would arise much less frequently.

Second, compensation for uncovenanted improvements in respect to all types of property—houses as well as shops.

Third, compensation for valuable goodwill wherever it exists, including the goodwill of professional men, doctors, etc., as well as of traders.

And last, but by no means least, some means of obtaining the right in special circumstances to acquire their freeholds compulsorily. Leasehold enfranchisement is not the most satisfactory remedy for all forms of grievance, but there are unquestionably circumstances where it ought to be available. It is intolerable that in towns where all the land is monopolised by one or two great landlords they should be able, by refusing to sell freeholds, to hold the whole community perpetually at their mercy. Freedom of contract is in such cases a farcical misnomer.

Not one of the reforms outlined above is at present contained in the Government Bill. Unless they can be included in the course of the Committee stage, the final measure will be lamentably inadequate, however excellent its intentions, and may in fact only serve to delay a proper treatment of the leasehold problem.

HENRY B. BARTON,
President,
THOMAS KEENS,
Chairman,
Leasehold Reform Association.

Westminster, S.W.1.
14th April.

[We have pleasure in publishing the above letter, though we do not necessarily identify ourselves with the views therein expressed.—ED., *Sol. J.*]

House of Lords.

The "Ruapehu." 4th April.

SHIPPING—DOCKS—REPAIRS TO SHIP BY DOCK OWNER—DAMAGE TO SHIP BY FIRE—LIABILITY OF DOCK OWNER—LIMITATION OF LIABILITY—MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT, 1900, s. 2.

In an action by the plaintiffs claiming a declaration that, as dock owners, they were entitled, under s. 2 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1900, to a decree limiting their liability,

Held, that they were entitled, to the declaration notwithstanding the fact that the work in which the negligence occurred was done by the plaintiffs in the capacity of ship repairers and not of dry dock owners.

The action was brought by R. & H. Green & Silley Weir, Ltd., the owners of a dry dock, at Blackwall, where they carried on business of ship repairers, to limit their liability under the Act of 1900 for damage done by fire to the defendants' ship while it was undergoing repairs by the plaintiffs in their dock. In an action they had been held liable for the damage, and they now claimed to limit their liability to £69,067, being £8 per ton on the tonnage of the largest vessel using the dock in the preceding five years. At the hearing, however, it was agreed that the question whether the plaintiffs were entitled to limit their liability at all should be first determined. This point came before Hill, J., who decided that the section only limited the liability of a dock owner as a dock owner, and did not include the liability for anything which a dock owner might do in any other capacity. The Court of Appeal reversed this decision, holding that the limitation only had reference to area, and therefore applied to the facts of this case. The defendants now appealed to this House.

Lord HALDANE said he could not find any ambiguity in the language of the section. It declared that the owner of a dry dock was not to be liable in excess of the statutory limit, and the conditions defining the limit were to be sought for within the area over which the dock owner performed any duty or exercised any power. There was not a word about the capacity in which the dock owner had acted. The dock owner was put in the same position as a shipowner. But in the case of a shipowner a question analogous to that which arose in this case was settled as long ago as 1872, in *London & South Western Railway* v. *James*, L.R. 8 Ch. 241, where it was argued that the limitation of liability imposed by the Merchant Shipping Act of 1862 had no application to the case of persons and goods carried by the shipowner when he was not merely shipowner but also carrier. But the court held that every case where the owner would be liable, whether he were carrier or not, was intended to be within the relief given by the statute. He could not find that that decision was noticed in the courts below, nor in the arguments before that House, but he thought that the principle adopted in it came very close to that of the present

case. He was not sure that Hill, J., had not been influenced, contrary to his own opinion, by the view which appeared to have been adopted by the Court of Appeal in the case of *The City of Edinburgh*, 1921, P. 274. Anyhow, in reversing his judgment in the present case, the Court of Appeal, differently constituted, reverted to the principle that the basis of the limitation was area and not capacity. He also thought that the words of the statute were too plain to admit of any other restraint being put upon their operation than that of geographical area. That interpretation appeared to him to be the true one, and in his opinion the appeal failed.

Lord SUMNER and Lord ATKINSON concurred. Lord WRENBURY and Lord BLANESBURGH differed.

COUNSEL: *Jowitt*, K.C., and *Pilcher*; *Macmillan*, K.C., *Langton*, K.C., and *Carpmael*.

SOLICITORS: *Pritchard & Sons*; *William A. Crump & Son*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

Layzell and Another *v.* **Thompson and Others.**

9th and 10th March.

FRANCHISE—ANCIENT FERRY—PRESUMED LOST GRANT—FERRY OVER CREEK DRY AT LOW TIDE—FERRY FORMING LINK OF HIGHWAY—ACTS INCONSISTENT WITH PROPERLY CONDUCTED FERRY—FRANCHISE STILL MAINTAINABLE.

Where plaintiffs showed that for many generations they, or their predecessors, had exercised the exclusive right of ferrying over a certain creek, the existence of an ancient franchise of the ferry, thus established by strong prima facie *evidence, was not negatived by the following facts:* (1) *that the creek in question was dry, and passable by stepping stones, at low tide;* (2) *that the alleged ferry connected the highway at each side of the creek;* (3) *that there might have been certain irregularities, such as overcharging, practised by the owners of the ferry; those irregularities might have been grounds for proceedings against the ferrymen, but they did not avail to upset the recognition of the existence of the ferry.*

Appeal from a decision of Romer, J. The plaintiffs claimed a declaration that they were entitled to and were possessed of an ancient ferry across Benfleet Creek, between the causeway at South Benfleet, Essex, and the highway opposite on Canvey Island. They also sought an injunction to restrain the defendants, their servants and agents, from disturbing the plaintiffs in the possession or enjoyment of the ferry. The defendants had established and maintained a rival service at the same place. The defence was that the ferry claimed was not, and could not be, an ancient ferry, as it was only at high tide that it was necessary to cross by boat and there was a public highway across the creek at the same point at which the ferry was claimed. Romer, J., came to the conclusion that in times gone by there had been a grant of a franchise ferry to the predecessors in title of the plaintiffs who were in possession of the ferry and, that being so, he must grant an injunction. The defendants appealed. The Court, without calling upon counsel for the respondents, dismissed the appeal.

Lord HANWORTH, M.R., said that as regards the first point put forward, the unique circumstances, it was true that at low tide it was possible to cross this waterway dryshod by planks leading to stepping stones. At high tide the water was about seventy-five yards across, the creek so formed was a waterway and there had been a passage of barges along it for many years. It was said that, as there was a highway of water at high tide and indications of a highway leading to each shore where the ferry crossed at high tide, and that as there was a causeway at low tide, it was impossible that there could be a franchise of a ferry—a ferry which would only be needed during part of the day. That suggestion was ill founded, because at certain times, when the tide was near the full, there was an interruption of traffic which might take place during business hours and be highly inconvenient. It looked as if there might be need of a ferry, and if that need were not always so pressing as where there was a channel of water at all tides, the need was proved by the fact that for very many years there had been persons plying as ferrymen. It had been argued that there was no documentary evidence of the existence of the ferry. The really important fact was that for very many years persons in a regular chronological sequence had plied for hire from shore to shore, and he could not, therefore, find in those "unique circumstances," as they were called, anything to contradict the possibility of the grant of a ferry. In alleging that there could be no presumption of a lost grant, it was said that the user of the ferry did not prove this presumption; that it was inconsistent with it; that the ferry service varied; that the toll charges varied; that the service had not in fact the consistency which should be found in a properly conducted ferry. Isolated facts perhaps supported that view. In 1910 an application was made to the Port of London Authority by the plaintiffs' predecessor in title for the grant of a licence, which the Authority declined to grant; but that was not conclusive, because the Authority had no power to decide whether there was or was not a ferry. Further, the same predecessor had paid a man called Whitehead, who alleged that "this is a free ferry," £5 not to ferry, but that too was not conclusive. The payment of the £5 might have been an act of discretion and not necessarily an admission that there was no franchise of a ferry. As regards the suggestion that there had been inconsistency in the charges made, there was no doubt that during certain hours of the night there had been heavy charges made by a predecessor of the plaintiffs. It seemed that on certain occasions he had asked for more than the sixpence per person ordinarily levied during the night hours, and there was evidence of other instances of inconsistent demands. But in considering that matter Romer, J., had rightly turned to *Trotter* v. *Harris*, 2 Y. & J. 285, where it was said that in all these cases of ferries there might have been acts done contrary to the duty of the ferryman or the right of the public, but that only meant that ferrymen, like others in this world, were subject to human frailties, and not that there was no ferry. The fact was that even if there had been a certain number of unreasonable and improper demands, yet, when it was found that there was an exercise of this right of ferrying by a long series of watermen, the fact that there had been some irregularities or infringements of the right of the public did not seriously avail to upset the recognition of a right to the ferry so established. Romer, J., had taken all these facts into consideration in giving his very careful judgment.

Lords Justices SARGANT and LAWRENCE gave judgment to the same effect.

COUNSEL: *Roland Burrows* and *H. S. Palmer* for appellants; *Macmorran*, K.C., and *Hodge* for respondents.

SOLICITORS: *Maitland, Peckham & Co.*; *Bentley & Jenkins*, for *Snow & Snow*, Southend.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Horlick *v.* **Scully.** Eve, J. 10th March.

LEASE—COVENANT—TO KEEP PLEASURE GROUNDS IN GOOD ORDER AND CONDITION—BREACH—ORNAMENTAL LAKES—SILTING UP OF MUD—LIABILITY OF TENANT.

In a lease of a mansion house and grounds the tenant covenanted to keep the "pleasure grounds" in good order and condition. The ornamental lakes forming part of the pleasure grounds became silted up with mud. In an action for breach of covenant.

Held, that the tenant must remove so much of the mud as would leave a head of 2 feet 6 inches of water above the mud.

By a lease made in 1915 a mansion house and grounds were demised to the defendant for 13½ years at a rental of £1,150, and the defendant covenanted to keep "all pleasure grounds" in good order and condition. Included in the pleasure grounds were ornamental lakes with trout fishing and there was evidence that these lakes became silted up with mud, and that 2 feet 6 inches of water over the mud was necessary to keep the fishing in good order and condition. The weeds in the lakes had been regularly cut by the defendant. The plaintiff claimed a declaration that it was incumbent on the defendant to keep the ornamental waters in good order and condition, or, alternatively, damages.

EVE, J., said it was conceded that the lakes were included in the expression "all pleasure grounds." The landlord said that the lakes were not in good order by reason of the accumulation of mud to a greater depth than was proper, but the tenant denied any obligation to remove it. It was argued that the clearing out of the mud would be in the nature of a structural repair to be executed by the landlord. His lordship could not accept that. The question was whether there was any authority which compelled him to impose upon the language of this covenant a restricted meaning which would absolve the tenant from liability to do this work. Reliance was placed upon *Dashwood* v. *Magniac*, 1891, 3 Ch. 306, but in that case there was no evidence to show the condition in which the testator had left the lakes, and it was held that as between tenant for life and remainderman the tenant for life was only liable for income expenditure, and it would have been inequitable to impose upon the tenant for life a large capital expenditure. The present case, therefore, was not governed by that decision. The plaintiff was, *primâ facie*, entitled to the declaration he claimed, but the question was what was meant by proper order and condition. It meant that the tenant was to arrest any injurious element which rendered the lakes out of order. He held that the measure of liability of the tenant was to remove as much mud as would leave a head of 2 feet 6 inches of water above the mud. The plaintiff would have the costs of the action.

COUNSEL: *Farwell*, K.C., and *Merlin*; *Gover*, K.C., and *Chubb*.

SOLICITORS: *Markby, Stewart & Wadesons*; *Indermaur and Clark*.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Lorden *v.* Brooke-Hitching and Others.

Salter, J. 15th February.

LEASE—RESTRICTIVE COVENANTS—PREMISES AS RESTAURANT—LICENSING—JUSTICES' LICENCE—EXCISE LICENCE—"RESTAURANT LICENCE"—MEANING OF "LICENSED VICTUALLER"—THE FINANCE (1909-1910) ACT, 1910, 10 Edw. 7, c. 8, s. 45—BEERHOUSE ACT, 1830, 11 Geo. IV and 1 Will IV, c. 64, s. 31—REFRESHMENT HOUSE ACT, 1860, 23 Vict. c. 27, s. 44.

A lease contained a covenant that the demised premises should not be used for the trades of an alehouse keeper, beerhouse keeper, tavern keeper or licensed victualler. It was held that the use of the premises as a restaurant, with a "restaurant licence" permitting the sale of beer and wines with food, was not a breach of the covenant.

In this action the plaintiff, John William Lorden, sought to recover from the late Sir Thomas Brooke-Hitching and Callard, Stewart and Watt, Limited, damages for the alleged breach of a covenant that the trades or businesses of alehouse keeper, beerhouse keeper, tavern keeper or licensed victualler should not be carried on or exercised at Nos. 513 and 515, Oxford Street. The plaintiff acquired by a lease dated the 31st May, 1920, certain land and premises at the corner of Oxford Street and Park Lane for a period of eighty-eight and a half years from Ladyday, 1914. He erected more buildings on the land, and by a sub-lease, dated the 11th June, 1920, he sub-let the premises, Nos. 509, 511, 513 and 515 Oxford Street and 40 Park Lane to the defendant, the late Sir Thomas Brooke-Hitching, for eighty-eight and a half years, less ten days, from Ladyday, 1914. Clause 11 of both the head and the sub-lease contained a covenant by the tenant enumerating the various trades which were not to be carried on on the demised premises without the permission of the lessor, and in the case of the sub-lease, the permission of both the freeholder and the lessor was necessary. Sir Thomas Brooke-Hitching sub-let Nos. 513 and 515, Oxford Street, to Maude and Co. by a sub-lease dated the 8th November, 1920. This sub-lease contained a covenant restricting the use of the premises to the business of general restaurateurs and caterers, unless with the lessor's consent, in which case no business which might depreciate the value of the premises or cause nuisance should be carried on. Maude and Co. used the premises as a restaurant and held a licence dated the 1st April, 1921, to keep open the premises as a refreshment house; they held no licence for the sale of excisable liquor. Maude and Co. assigned their interest to the defendants, Callard, Stewart and Watt, Limited, who carried on the business of confectioners and restaurant keepers; the refreshment house licence was also transferred to them on the 8th June, 1921. The absence of a licence to sell excisable liquors however necessitated sending out for them when required by customers. To avoid this inconvenience a justices' licence was obtained on the 3rd March, 1922, which authorised them to hold an excise licence to sell beer and wine by retail at the premises known as Stewart's Restaurant, for consumption on the premises. The conditions endorsed on the licence were: "No bar to be erected. Wine or beer to be sold only with *bonâ fide* meals. No wine or beer to be sold off the premises. The sum of £150 as monopoly value to be paid to the Commissioners of Customs and Excise." An Excise licence dated the 1st October, 1922, was obtained, and both justices' and Excise licences were obtained each succeeding year, with the result that since the 1st October, 1922, the defendants' customers can obtain beer or wine, but not spirits, with their meals without sending out for it. The question was whether the use of the premises as a restaurant with a beer and wine on-licence was a breach of the covenant not to use them for the trades of an alehouse keeper, beerhouse keeper, tavern keeper or licensed victualler.

SALTER, J., giving a reserved judgment, referred to the nature of the action, and stated the material facts at some length. He referred to s. 45 of the Finance Act, 1910, which provides for a reduced licence duty where the premises are adapted for a restaurant, and continued: The justices have power to grant a licence, which is, in effect, useless except for a restaurant, and this power, coupled with the provision of a lower licence duty for restaurants, has, I think, created what may fairly be described (as it is described in the Excise licence here) as a "restaurant licence." It is a licence more limited and less costly than a regular, unconditional licence—a licence to sell drink, not as the main business of the licensee, but as ancillary to his main business. The general words of the covenant, which is in a familiar form, are: "Or any other art, trade, business or employment whatsoever which shall be dangerous or a nuisance or annoyance to the tenant or occupier of any messuage, suite, flat or any other hereditament in the neighbourhood of the premises hereby demised." The object of the covenant is plainly to maintain the amenity of the neighbourhood and to prevent any annoyance to adjoining occupiers. The use of the demised premises for business purposes is contemplated. There is no prohibition of retail trade, and none of the sale of excisable liquor. The prohibition of each trade, or group of trades, must be read in the light of the general words which follow the enumeration. The language of the clause is popular and untechnical, and trades are separately mentioned which are very similar if not identical. The words relied on by the plaintiff are "alehouse

keeper, beerhouse keeper, tavern keeper, licensed victualler." I think these words must be read, with the rest of the clause, in their ordinary and popular meaning. His lordship referred to the case of *Holt and Co.* v. *Collyer*, 16 Ch. D. 718, and also dealt with the meaning of alehouse keeper, beerhouse keeper and tavern keeper, and said: The words most relied on were "licensed victualler." It was admitted that the refreshment house licence did not make them licensed victuallers within this covenant, but it was submitted that the beer and wine licence did. In my opinion they are not licensed victuallers within the meaning of this covenant, either in a technical or a popular sense. In so far as these words ever had a technical meaning, they applied to a person who held a victualler's licence under the Alehouse Act of 1828. The corresponding modern licence is the publican's full on-licence. His lordship referred to the following cases: *Reg.* v. *The Justices of Surrey*, 52 J.P. 423; *Pease* v. *Coates*, L.R. 2 Eq. 688; *Stuart* v. *Diplock*, 43 Ch. D. 343; and *The Duke of Devonshire* v. *Simmons and Another*, 39 Sol. J., 60. These cases seemed to support the view of this covenant which he had expressed. He referred to the contention that the second defendants were carrying on one or other of the four prohibited trades by reason of the provisions of s. 31 of the Beerhouse Act, 1830, and s. 44 of the Refreshment House Act, 1860, but thought that there was nothing in either of these sections to prevent him from gathering the intention of the parties from the words they had used. The alleged breach of this covenant had not been proved, and judgment was given for both defendants.

Counsel: *Sir Leslie Scott*, K.C., and *G. R. Blanco White*, for the plaintiff; *J. D. Cassels*, K.C., and *N. L. C. Macaskie*, for the defendant Sir Thomas Brooke-Hitching; *W. A. Jowitt*, K.C., and *H. H. King*, for the defendants Callard, Stewart and Watt, Limited.

Solicitors: *W. H. Bellamy; Stanley Evans & Co.; Richardson, Sadlers & Callard.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Societies.

The Law Society.

HONOURS EXAMINATION.

March, 1927.

At the Examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the Examination Committee recommended the following as being entitled to honorary distinction:—

First Class.

Philip Ollerenshaw Walker, B.A. Cantab (Mr. Henry Milnes Walker, of the firm of Messrs. Bury & Walkers, of Barnsley); Eric Neville Neave (Mr. Frederick George Neave, LL.D., of the firm of Messrs. Neave, Morton & Co., of London); Charles Michael Ridley Peecock (Mr. John Manning Prentice, B.A., of the firm of Messrs. Gudgeons, Peecock & Prentice, of Stowmarket).

Second Class.

Stanley Clifford Baron, LL.B. London (Mr. Herbert Baron, of London); Harold George Theodore Christians (Mr. William George Christians, of Swansea); Ronald Lindesay Griffith Davies (Mr. Alfred Rogers Ford, of the firm of Messrs. Smiths, Ford & McFadyean, of Weston-super-Mare; and Messrs. Pritchard, Englefield & Co., of London); Douglas Walter Gaskell, LL.B. London (Mr. Walter Gaskell, of the firm of Messrs. Mills, Curry & Gaskell, of London); William Leslie Tuers Harvey, LL.B. London (Mr. Harry Bolton Sewell, of the firm of Messrs. H. B. Sewell & Son, of London).

Third Class.

Harry Bainbridge (Mr. Erskine Hannay, of the firm of Messrs. Hannay & Hannay, of South Shields); George Rodwell Drake (Mr. Robert Farra Hill (deceased), and Mr. William Arthur Kay, LL.B., of the firm of Messrs. Newbald Kay & Son, both of York); Cyril Peter Grobel (Mr. Christian Grobel, of the firm of Messrs. C. Grobel & Co., of London); Muriel Lefroy, M.A. Cantab (Mr. Franklin George Lefroy, of Bournemouth); William Ewart Liversedge, LL.B. Leeds (Mr. George Stephen Ward, of Doncaster); Malcolm Harding Moss (Mr. Wilfred Moss, C.B.E., of Loughborough; and Messrs. Field, Roscoe and Co., of London); Ronald James Pritchard (Mr. James Pritchard, of the firm of Messrs. Hall, Pratt & Pritchard, of Bilston); Edward Tucker Ray (Mr. Robert Graham Walton, of the firms of Messrs. Pettit, Walton & Co., of London, and Messrs. Worley & Co., of Stony Stratford); Frank Henry Spark (Sir Alfred Appleby, J.P., of the firm of Messrs. Appleby and Lisle, of Newcastle-upon-Tyne); Charles Frederick Stuart Spurrell (Mr. Charles Granville Kekewich, M.A., deceased, and Mr. Charles Murray Smith, B.A., both of the firm of Messrs. Trinder, Kekewich & Co., of London); Geoffrey Herbert Syrett (Mr. Herbert Sutton Syrett, LL.B., C.B.E., of the firm of Messrs. Syrett & Sons, of London).

The Council of the Law Society have accordingly given a Class Certificate and awarded the following Prizes:—

To Mr. Walker—The Clement's Inn Prize, value about £42.

To Mr. Neave and Mr. Peacock—Each the Daniel Reardon Prize, value about £21.

The Council have given Class Certificates to the Candidates in the Second and Third Classes.

Fifty candidates gave notice for examination.

By order of the Council,

E. R. COOK,
Secretary.

Law Society's Hall,
Chancery-lane, London, W.C.

The Medico-Legal Society.

(*President:* The Rt. Hon. Lord Justice Atkin.)

An ordinary meeting of the society will be held at 11, Chandos-street, Cavendish-square, W.1, on Thursday, the 28th inst., at 8.30 p.m., when a Paper will be read by Dr. A. Knyvett Gordon on "Certain Difficulties in Life and Sickness Assurance," which will be followed by a discussion.

Members may introduce guests to the meeting on production of a member's private card.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at The Law Society's Hall, Chancery-lane, London, on the 13th inst., the Right Hon. Sir William Bull, Bart., M.P., in the chair. The following Directors were also present: Sir A. C. Peake (Leeds) and Messrs. E. E. Bird, A. C. Borlase (Brighton), T. S. Curtis, E. F. Dent, A. G. Gibson, L. T. Helder (Whitehaven), E. F. Knapp-Fisher, C. G. May, H. A. H. Newington, R. W. Poole, P. J. Skelton (Manchester), and A. B. Urmston (Maidstone). £815 was distributed in grants of relief, 195 new members were elected, and other general business transacted.

Law Students' Journal.

Law Students' Debating Society.

At a meeting of the society, held at The Law Society's Hall, on Tuesday, the 12th inst. (Chairman, Miss D. C. Johnson), the subject for debate was: "That this House is in favour of divorce by mutual consent." Mr. M. J. Hart-Leverton opened in the affirmative. Miss C. M. Young opened in the negative. The following members also spoke: Messrs. H. M. Pratt, M. C. Batten, E. G. M. Fletcher, S. Lincoln, J. F. Chadwick, J. W. Morris and E. E. Higgs. The opener having replied, and the Chairman having summed up, the motion was lost by two votes. There were twenty-four members and four visitors present.

Legal Notes and News.

CIRCUITS OF THE JUDGES.

SPRING ASSIZES, 1927.

NORTH-EASTERN (Salter, J., and Greer, J.).—Monday, 2nd May, Leeds (Civil and Criminal).

NORTHERN (Roche, J., and Branson, J.).—Monday, 25th April, Liverpool (Civil and Criminal); Saturday, 7th May, Manchester (Civil and Criminal).

SUCCESSFUL CLAIM.

The First Division of the Anglo-German Mixed Arbitral Tribunal, sitting in London on the 28th ult., delivered final judgment on the claim brought by Gustav Emile de Brunner, Edward Harold Riches, and 108 other debenture-holders against C. Grossman Eisen and Stahlwerk A.G.

It appeared that the debtors, who were iron and steel manufacturers in Germany, issued in 1911 to the 108 creditors debentures to the total nominal value of £42,250—secured by a general mortgage on the total real estate of the debtors, dated 16th August, 1911, which was concluded between two trustees for the 108 debenture-holders and the representatives of the debtors. Art. 5 (*d*) of the mortgage indenture provided that the total amount of the debentures would become due and payable at once with an addition of 2 per cent. of the nominal value of the bonds if the company carried out any pledge without the consent of the trustees. Between 19th August, 1914, and 4th March, 1915, the debtors pledged, or assigned, to the Bergisch-Märkische Bank in Elberfeld without the consent of the trustees book debts owing from certain firms to the debtors for the total sum of about 162,000m.

The Tribunal, in their judgment, said the debtors had submitted that Art. 5 (*d*) of the indenture did not become operative unless the debtors had committed a culpable breach of contract, and had referred to the Tribunal's decision in *Cohen* v. *Bernoully* (Recueil, Vol. VI., p. 65), urging that, as under German law a *Vertragsstrafe* was not payable unless a culpable act had been committed, the amounts in question, being governed by that principle of German law, did not become payable during the war, the debtors having in the circumstances acted reasonably and in the interest of the debenture-holders. The Tribunal were of opinion that the decision referred to, where the facts relied on related to an omission to pay interest when due, was distinguishable. Also, they were not satisfied that the assignment without the consent of the trustees could be justified as a reasonable or not culpable act in relation to the debenture-holders and their interests. Therefore the debentures, in any case, became payable at once in accordance with the provisions of Art. 5 (*d*)—i.e., during the war, and before the date from which interest was claimed.

Judgment for the 103 debenture-holders was entered accordingly, for £40,230, together with 2 per cent. thereon as premium and 5 per cent. interest on the principal sums from 1st December, 1919, until crediting.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Romer.
Monday Apl. 25	Mr. Synge	Mr. Jolly	Mr. Hicks Beach	Mr. Bloxam
Tuesday .. 26	Ritchie	More	Bloxam	Hicks Beach
Wednesday 27	Bloxam	Synge	Hicks Beach	Bloxam
Thursday . 28	Hicks Beach	Ritchie	Bloxam	Hicks Beach
Friday 29	Jolly	Bloxam	Hicks Beach	Bloxam
Saturday .. 30	More	Hicks Beach	Bloxam	Hicks Beach

Date.	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday Apl. 25	Mr. Synge	Mr. Ritchie	Mr. More	Mr. Jolly
Tuesday .. 26	Ritchie	Synge	Jolly	More
Wednesday 27	Synge	Ritchie	More	Jolly
Thursday . 28	Ritchie	Synge	Jolly	More
Friday 29	Synge	Ritchie	More	Jolly
Saturday .. 30	Ritchie	Synge	Jolly	More

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement, Thursday, 28th April, 1927.

	Middle Price 20th Apr.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85¾	4 13 6	—
Consols 2½%	54⅝	4 11 6	—
War Loan 5% 1929-47	102½	4 18 0	4 19 6
War Loan 4½% 1925-45	96	4 14 0	4 17 6
War Loan 4% (Tax free) 1929-42 ..	100½	4 0 0	4 0 0
War Loan 3½% 1st March 1928 ..	99⅝	3 11 0	4 14 0
Funding 4% Loan 1960-90	86¾	4 12 0	4 13 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	91½	4 7 6	4 10 6
Conversion 4½% Loan 1940-44 ..	96⅝	4 13 0	4 18 0
Conversion 3½% Loan 1961	75⅞	4 12 0	—
Local Loans 3% Stock 1921 or after ..	63⅜	4 14 6	—
Bank Stock	247½	4 17 0	—
India 4½% 1950-55	89½xd	5 0 6	5 4 0
India 3½%	68½	5 2 0	—
India 3%	59½	5 1 0	—
Sudan 4½% 1939-73	94	4 16 0	4 17 0
Sudan 4% 1974	83½xd	4 16 0	4 19 0
Transvaal Government 5% Guaranteed 1923-53 (Estimated life 19 years) ..	80¼	3 14 0	4 12 0
Colonial Securities.			
Canada 3% 1938	84½	3 11 6	4 18 0
Cape of Good Hope 4% 1916-36 ..	91½	4 7 6	5 2 0
Cape of Good Hope 3½% 1929-49 ..	79¾	4 8 0	5 1 0
Commonwealth of Australia 5% 1945-75	100½	5 0 0	5 0 0
Gold Coast 4½% 1956	95	4 15 6	4 17 6
Jamaica 4½% 1941-71	90½	4 19 6	5 1 0
Natal 4% 1937	92	4 7 0	5 0 0
New South Wales 4½% 1935-45 ..	87½	5 3 0	5 11 6
New South Wales 5% 1945-65	96¾	5 3 0	5 6 0
New Zealand 4½% 1945	95	4 15 0	4 18 6
New Zealand 5% 1946	101⅜	4 18 0	4 18 6
Queensland 5% 1940-60	96½	5 3 6	5 4 6
South Africa 5% 1945-75	102	4 18 0	4 19 6
S. Australia 5% 1945-75	98½	5 1 6	5 2 6
Tasmania 5% 1945-75	100⅛	4 19 6	5 1 0
Victoria 5% 1945-75	100	5 0 0	5 2 0
W. Australia 5% 1945-75	98¾	5 1 0	5 3 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corpn.	62⅜	4 16 0	—
Birmingham 5% 1946-56	101¼	4 19 0	5 0 0
Cardiff 5% 1945-65	100⅜	4 19 0	4 19 0
Croydon 3% 1940-60	68⅜	4 7 6	5 0 0
Hull 3½% 1925-55	78¼	4 10 0	5 0 0
Liverpool 3½% on or after 1942 at option of Corpn.	72¾	4 17 0	—
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52	4 16 0	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62⅜	4 16 0	—
Manchester 3% on or after 1941 ..	62¾	4 15 6	—
Metropolitan Water Board 3% 'A' 1963-2003	62¾	4 15 6	4 16 0
Metropolitan Water Board 3% 'B' 1934-2003	64¼	4 13 6	4 15 0
Middlesex C. C. 3½% 1927-47 ..	81¼	4 6 0	4 18 0
Newcastle 3½% irredeemable	71½	4 18 6	—
Nottingham 3% irredeemable	60½xd	4 19 0	—
Stockton 5% 1946-66	100¾	4 19 0	4 19 6
Wolverhampton 5% 1946-56	100¼	5 0 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture ..	81	4 19 0	—
Gt. Western Rly. 5% Rent Charge ..	98½	5 1 6	—
Gt. Western Rly. 5% Preference ..	93½	5 7 0	—
L. North Eastern Rly. 4% Debenture..	75⅞	5 6 0	—
L. North Eastern Rly. 4% Guaranteed	71½	5 12 0	—
L. North Eastern Rly.4% 1st Preference	6 ⅛	6 0 0	—
L. Mid. & Scot. Rly. 4% Debenture ..	80½	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed ..	76⅜	5 4 0	—
L. Mid. & Scot. Rly. 4% Preference ..	72½	5 10 0	—
Southern Railway 4% Debenture ..	80¾	5 0 0	—
Southern Railway 5% Guaranteed ..	97	5 3 0	—
Southern Railway 5% Preference ..	91⅜	5 9 0	—